TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 680.

THE TOWNSHIP OF BURLINGTON, IN THE COUNTY OF COFFEY, PLAINTIFF IN ERROR,

vs.

ALFRED W. BEASLEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED AUGUST 25, 1876.

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1 In the circuit court of the United States for the district of Kansas.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE COUNTY of Coffey, State of Kansas, defendant.

Be it remembered that on this day, to wit, the 21st day of February, A. D. 1876, the said plaintiff, by A. L. Williams, his atttorney, filed in the clerk's office of said court his petition, precipe, and security for costs in said entitled action, and on the 11th day of July, 1876, the parties plaintiff and defendant filed in the clerk's office of said court a stipulation in the above-entitled action; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the circuit court of the United States for the district of Kansas.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE COUNTY of Coffey, State of Kansas, defendant.

The sixty-four causes of action contained in the petition in the above-entitled cause being upon sixty-four coupons each for the sum of $25.00, and each and all of said causes of action being of a like character, it is hereby agreed between the parties to said action that the transcript made for the Supreme Court of the United States shall contain a
2 copy of only the first of said causes of action.

A. L. WILLIAMS,
Atty. for Pltff.
A. M. F. RANDOLPH,
Atty. for Deft.

(Endorsed:) No. 1486. Alfred W. Beasley vs. The Township of Burlington, County of Coffey, State of Kansas. No. 1486. Stipulation filed July 11, 1876. A. S. Thomas, clerk.

Petition.

The petition contains sixty-four counts, the first of which is as follows, to wit:

In the circuit court of the United States for the district of Kansas.

Petition.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE COUNTY of Coffey, State of Kansas, defendant. } Petition.

The plaintiff, Alfred W. Beasley, who is a resident of the city of New York, in the State of New York, and a citizen of the State of New York, complains of the defendant, the township of Burlington, in the county of Coffey and State of Kansas, a municipal corporation organized and doing business under the laws of the State of Kansas, and a citizen of the State of Kansas, and for causes of action says:

That on the third day of December, 1872, at said Burlington, in the county of Coffey and State of Kansas, the said defendant made and issued its certain bond, dated on said day, at said place, whereby, fo

value received, it promised, five years from date, to pay to John S. Stow or bearer five hundred dollars at the banking-house of Northrup &
3 Chick, in the city of New York, State of New York, with interest at the rate of ten per cent. per annum, payable semi-annually at said banking-house, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked "No. 1;" a copy of said bond, except as to number, is hereto attached and made part hereof; that on the twentieth day of January, 1873, said bond was duly registered in the office of the auditor of State; that attached thereto was, among others, a certain coupon bearing date on the day and at the place aforementioned, made by said township of Burlington, whereby it promised to pay to the bearer thereof twenty-five dollars at said banking-house on the third day of June, 1874, for the interest then and there to be due on said bond; which coupon is in words and figures as follows:

$25.00. No. 3.

The treasurer of Burlington Township, Coffey County, Kansas, will pay to the bearer twenty-five dollars at the banking-house of Northrup & Chick, in the city of New York, on the third day of June, A. D. 1874, for six months' interest on bond No. 1, issued on the third day of December, A. D. 1872.

H. R. FLOOK,
Township Trustee.

Attest: G. N. McCONNELL, *Township Clerk.*

That before said coupon by its terms became due and payable, the said bond, together with said coupon, came to and for value became the property of the plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable, the same was duly pre-
sented at the place of payment therein mentioned and payment
4 demanded, but refused, because said defendant had not, nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of twenty-five dollars, which he claims, with interest from the 3rd day of June, 1874.

The other sixty-three counts are identically the same as the first, except as to the number of the bonds and coupons referred to.

The bond above referred to is in the words and figures following, to wit:

$500. No. 1.

Bond of Burlington Township.

UNITED STATES OF AMERICA,
County of Coffey, State of Kansas:

Burlington Township, in the county of Coffey, State of Kansas, promis' to pay John S. Stow or bearer the sum of five hundred dollars on the third day of December, A. D. 1877, and interest thereon at the rate of ten per cent. per annum, payable semi annually upon presentation of the coupons therefore hereto annexed; both principal and interest payable at the banking-house of Northrup & Chick, in the city of New York. This bond is one of an issue of eight thousand dollars, made for the purpose of aiding internal improvements in said township, and in pursuance of an act of the legislature of the State of Kansas entitled

"An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in
5 the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

In testimony whereof the township trustee, clerk, and treasurer have caused this bond to be issued, duly signed, attested, and countersigned, this third day of December, A. D. 1872.

H. R. FLOOK, *Trustee.*

Attest: G. N. McCONNELL, *Clerk.*
Countersigned: H. L. JARBOE, *Treasurer.*

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that such a bond has been duly registered in my office in accordance with an act of the legislature entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

Witness my hand and official seal this 20th day of January, 1873.

D. W. WILDER,
Auditor of State.

The prayer to the petition is as follows, to wit:

Wherefore the plaintiff prays for a judgment against the defendant for the several sums of money hereinbefore mentioned, and amounting,
6 in the aggregate, to the sum of one thousand six hundred dollars, ($1,600.00,) together with interest thereon at the rate of seven (7) per cent. per annum, as follows:

On $400.00 from June 3rd, A. D. 1874.
On $400.00 from December 3rd, A. D. 1874.
On $400.00 from June 3rd, A. D. 1875.
On $400.00 from December 3rd, A. D. 1875; and for costs of suit.

A. L. WILLIAMS,
Attorney for Plaintiff.

(Petition endorsed:) No. 1486. Alfred W. Beasley vs. The Township of Burlington, County of Coffey, State of Kansas. Petition. Filed Feb'y 21, 1876. A. S. Thomas, clerk. A. L. Williams, attorney for plaintiff.

Precipe.

The precipe and security for costs are in the words and figures following, to wit:

In the circuit court of the United States for the district of Kansas.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE County of Coffey, State of Kansas, defendant.

The clerk of said court will please issue summons in the above-enti-

tled action, directed to the marshal of the United States for the district of Kansas, and made returnable according to law.

Plaintiff claims judgment in the sum of one thousand six hundred dollars, ($1,600.00,) with interest thereon at the rate of ten per cent. per annum, as follows:

On $400.00 from June 3rd, A. D. 1874.
On $400.00 from December 3rd, A. D. 1874.
On $400.00 from June 3rd, A. D. 1875.
7 On $400.00 from December 3rd, A. D. 1875; and for costs of suit.

A. L. WILLIAMS,
Attorney for Plaintiff.

(Endorsed:) No. 1486. Alfred W. Beasley vs. The Township of Burlington, in the county of Coffey and State of Kansas. Precipe for summons. Filed Feb'y 21, 1876. A. S. Thomas, clerk. A. L. William, attorney for plaintiff.

Security for costs.

In the circuit court of the United States for the district of Kansas.

ALFRED W. BEASLEY
vs.
THE TOWNSHIP OF BURLINGTON, IN THE County of Coffey and State of Kansas.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated the 21 day of Feb'y, 1876.

A. L. WILLIAMS.

(Endorsed:) No. 1486. Alfred W. Beasley vs. The Township of Burlington, in the county of Coffey and State of Kansas. Security for costs. Filed Feb'y 21, 1876. A. S. Thomas, clerk. Approved. A. S. Thomas, clerk.

And on this day, to wit, the 21st day of February, 1876, the clerk of said court issued a writ of summons for the defendant in the above-entitled action, which said writ of summons, with the endorsements and the U. S. marshal's return thereon, is in the words and figures
8 following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
District of Kansas, ss:

The United States of America to the marshal of the district of Kansas, greeting:

You are hereby commanded to notify The Township of Burlington, in the county of Coffey, State of Kansas, that it has been sued by Alfred W. Beasley, in the circuit court of the United States for the district of Kansas, and that unless it answer by the twenty-second day of March,

A. D. 1876, the petition of the said Alfred W. Beasley against it, filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the 2d day of March, A. D. 1876.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 21st day of February, A. D. 1876.

[SEAL.] A. S. THOMAS, *Clerk.*

(Endorsed:) Suit brought for the recovery of money. Amount claimed, $1,600.00, with interest thereon at the rate of ten per cent. per annum, as follows: On $400.00 from June 3d, A. D. 1874; on $400.00 from December 3d, A. D. 1874; on $400.00 from June 3d, A. D. 1875; on $400.00 from December 3d, A. D. 1875, and for costs of suit. A. L. Williams, attorney for plaintiff. No. 1486. Circuit court of the United States, district of Kansas. Alfred W. Beasley vs. The Township of Burlington, in the county of Coffey, State of Kansas. Summons.

9 Issued Feb'y 21, 1876. Returnable March 2, 1876. A. L. Williams, attorney for plaintiff.

U. S. marshal's return.

DISTRICT OF KANSAS, *ss:*

Rec'd this writ Feb'y 21, '76, and served the same on the within-named defendant, The Township of Burlington, in the county of Coffey, & State of Kansas, at Coffey Co., State & district of Kansas, on the 25th day of Feb'y, 1876, by delivering to each of P. K. Wadham, J. A. Walkling, and Vergil Harter, personally, a true & certified copy of this writ, with all the endorsements thereon. He, said P. K. Wadham, being then & there the trustee, and said J. A. Walkling the treasurer, and said Virgil Harter the clerk of said defendant, The Township of Burlington, in the county of Coffey, and State of Kansas.

W. S. TOUGH,
U. S. Marshal.
By MART. B. HOOVER,
Deputy.

Marshal's fees, $12.00.
Filed M'ch 1, A. D. 1876.

A. S. THOMAS,
Clerk.

And on this day, to wit, the 22d day of March, 1876, the said defendant, by A. M. F. Randolph, its attorney, filed in the clerk's office of said court its answer in the above-entitled action, which said answer, with the endorsements thereon, is in the words and figures following, to wit:

Answer.

In the circuit court of the United States for the district of Kansas.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE COUNTY Coffey, State of Kansas, defendant. } Answer.

The defendant says:

10 First defence. In answer to plaintiff's petition, that it denies each and every allegation therein contained.

The said defendant, further answering, says:

Second defence. That on the 6th day of August, A. D. 1872, in the

said township of Burlington, in the county of Coffey, and State of Kansas, a special election was then and there held, for the purpose of submitting to the electors of said township the following proposition, to wit: "Shall the township of Burlington issue to John S. Stow, of said township and county, the bonds of said township to the amount of eight thousand ($8,000.00) dollars, to aid the said John S. Stow in the construction and completion and to furnish the motive-power of a custom grist-mill at the town of Burlington, under the conditions as follows: Said bonds are to be made payable in four equal installments of two thousand ($2,000.00) dollars each, in five, six, seven, and eight years, respectively, with interest as shall be determined by the board of officers issuing the same. Upon the issue of said bonds as aforesaid, said John S. Stow shall execute to said township his promissory notes for like amounts, to run the same time, bearing the same rates of interest, and secure the payment of said several notes by first mortgage on his said mill and grounds on which the same is situate; the proceeds of said bonds are to be used exclusively in the completion of said work of internal improvement, and in paying the outstanding debts and liabilities incurred upon said work of internal improvement, so far as said mill and machinery and improvements have progressed." And that the
11 returns of said special election showed that a majority of the qualified electors of said township of Burlington who voted at said election voted in favor of the issuance of said bonds of said township to said John S. Stow for the purposes aforesaid, and subject to the conditions as above set forth.

And that on the 3d day of December, A. D. 1872, the trustee, clerk, and treasurer of said Burlington Township, while pretending to act under and by virtue of the declared result of the special election held as aforesaid in said township, and, also, while pretending to act under the authority of an act of the legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2, 1873, executed and delivered to the said John S. Stow the bonds of said Burlington Township to the amount of eight thousand dollars, ($8,000.00,) the same being sixteen bonds, numbered from one to sixteen, inclusive, each and all of said bonds bearing date on the 3rd day of December, A. D. 1872, and being for the sum of five hundred dollars, ($500.00,) due as follows:

Bonds Nos. 1, 2, 3, and 4 due in five years from said date.

Bond' Nos. 5, 6, 7, and 8 due in six years from said date.

Bonds Nos. 9, 10, 11, and 12 due in seven years from said date.

12 Bonds Nos. 13, 14, 15, and 16 due in eight years from said date.

And each and all of said bonds, *bonding* bearing interest from their said date at the rate of ten per cent. per annum, payable semi-annually, and for which interest coupons are thereunto respectively attached.

And that on the 3rd day of December, A. D. 1872, the above-named John S. Stow, for and in consideration of the aforementioned bonds of said township, at Burlington, Kansas, executed and delivered to said Township of Burlington his four certain promissory notes; of which said notes the following are respectively copies, to wit:

$2,000.00. BURLINGTON, COFFEY COUNTY, KANSAS,
December 3rd, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars, on the third day of December, A. D. 1877, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

(Signed) JOHN S. STOW.

$2,000.00 BURLINGTON, COFFEY COUNTY, KANSAS,
December 3d, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars, on the third day of December, A. D. 1878, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

(Signed) JOHN S. STOW.

13 $2,000.00. BURLINGTON, COFFEY COUNTY, KANSAS,
December 3rd, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars on the third day of December, A. D. 1879, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

(Signed) JOHN S. STOW.

$2,000.00. BURLINGTON, COFFEY COUNTY, KANSAS.
December 3d, A. D. 1872.

I promise to pay Burlington Township, in the county of Caffey, State of Kansas, or bearer, the sum of two thousand dollars on the third day of December, A. D. 1880, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

(Signed) JOHN S. STOW.

And that to secure the payment of the four afore-mentioned promissory notes, the said John S. Stow and Levanche M. Stow his wife, on said 3rd day of December, A. D. 1872, executed and delivered to said Burlington Township a mortgage on the real estate and grounds whereon the said custom-grist mill was situate, to wit, upon lots numbered four, five, and six, (4, 5, and 6,) in block number forty (40,) in the city of Burlington, in said township; which said mortgage was duly filed for record on the day of December, A. D. 1872, in the office of the register of deeds in and for said county of Coffey, and duly recorded in book
14 , of mortgages, on pages , in his said office.

And that on the 20th day of January, A. D. 1873, each and all of said bonds were duly registered in the office of the auditor of state of the State of Kansas.

And that each and all of the bonds mentioned and described in said plaintiff's petition, and made a part thereof, are a part of the said series of sixteen bonds of said Burlington Township made and issued as aforesaid, and that each and all of the coupons for interest mentioned and described in said petition as forming the several causes of action therein stated, are a part of the coupons for interest attached to said bonds made and delivered to John S. Stow as aforesaid.

The defendant also says that said bonds were issued to aid a steam custom-grist mill not situated on a water-course or operated by water-power in said township.

The defendant further says that on the 31st day of May, A. D. 1875, in the district court in and for said county of Coffey and State of Kansas, during the May term of said court, in a certain action wherein the said John S. Stow was plaintiff, and P. K. Wadhams, trustee of Burlington Township, Coffey County, Kansas, and Burlington Township, Coffey County, Kansas, were defendants, said action being brought by said plaintiff to obtain an order and decree for the delivery up to him of the afore-mentioned promissory notes then held by said township, and for the cancellation of said mortgage, the following proceedings
15 were had in said cause, and the following order, decree, and judgment were rendered in favor of said John S. Stow, and against the said Burlington Township, also defendant herein; of which the following is a full and true copy, to wit:

And now come the said parties, by their attorneys, and thereupon this action came on for trial by the court, a jury being waived, upon the petition of the said plaintiff and the answer of said defendants and the evidence, and was argued by counsel, and thereupon the court finds that the several allegations in said plaintiff's petition are true as alleged therein, and that the notes and mortgage mentioned therein were given by said plaintiff to said defendants without any consideration whatever, and are therefore null and void.

It is therefore ordered and adjudged by the court that said defendant P. K. Wadhams, trustee of Burlington Township, Coffey County, Kansas, within ten days from this date deliver up to said plaintiff the said notes and mortgage-deed described in said petition, and that the said mortgage be cancelled on the records of said county, and that said P. K. Wadhams, trustee of Burlington Township, Coffey County, Kansas, and said Burlington Township, or any person holding under them, be forever enjoined against setting up any claim whatever by reason of the said notes and mortgage-deed.

The said defendant further says that the said four promissory notes have, in accordance with said order and judgment, been by it delivered up to the said John S. Stow, and said mortgage-deed has been
16 cancelled on the records of said county of Coffey, and that for and on account of the aforesaid series of bonds of said township, together with the coupons for interest thereunto attached as aforesaid, it has received no valuable consideration or thing whatsoever.

The said defendant therefore prays judgment in its behalf for costs herein against said plaintiff, and for such other and further relief in the premises as the court may deem meet.

A. M. F. RANDOLPH,
Atty. for Deft.

(Endorsed:) No. 1486. Alfred W. Beasley vs. The Township of Burlington, in the county of Coffey, Kansas. Answer filed March 22, 1876. A. S. Thomas, clerk. A. M. F. Randolph, atty. for deft.

And on this day, to wit, the 10th day of April, 1876, the said plaintiff filed in the clerk's office of said court his demurrer to 2d count of defendant's answer; which said demurrer, with the endorsements thereon, is in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States within and for the district of Kansas.

A. W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, COFFEY County, Kansas, defendant. } Demurrer.

The plaintiff demurs to the second count of defendant's answer, and for cause of demurrer says that the said count does not state facts sufficient to constitute a defence to the plaintiff's causes of action.

Wherefore the plaintiff prays judgment.

A. L. WILLIAMS,
Atty. for Plff.

(Endorsed:) No. 1486. Circuit court United States, district of Kansas. A. W. Beasley vs. Burlington Township. Demurrer to 2d count of deft.'s answer. Filed April 10, 1876. A. S. Thomas, clerk.

17 And on this day, to wit, the 15th day of June, A. D. 1876, in the June term of said court, in the record of the proceedings in the above-entitled action is the following entry, in the words and figures following, to wit:

Judgment.

THURSDAY, *June* 15, 1876.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE county of Coffey, State of Kansas, defendant. } 1486.

Now comes the plaintiff in this action, by A. L. Williams, his attorney, and also comes the defendant, by A. M. Randolph, its attorney, and thereupon this action came on to be heard upon the plaintiff's demurrer to the second count of the defendant's answer, which, being argued by counsel and considered by the court, is sustained. And said defendant not asking to amend its answer herein, the court finds for the plaintiff, and assesses his damages against said defendant at the sum of $1,743.72.

And thereupon it is by the court here considered, ordered, and adjudged that said plaintiff, Alfred W. Beasley, have and recover of and from said defendant, The Township of Burlington, in the county of Coffey, State of Kansas, the sum of one thousand seven hundred and forty-three dollars and seventy-two cents, as well as his costs in this action expended, taxed at $. Upon said demurrer there occurred a difference of opinion between the judges, which certificate of division of opinion is as follows:

Certificate of division.

In the circuit court of the United States for the district of Kansas.

18 ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE COUNTY of Coffey, State of Kansas, defendant.

This action is upon sixty-four coupons of $25.00 each, attached to certain bonds issued by defendant.

The following is a copy of one of the bonds and the registration thereof, to wit:

$500. No. 1.

Bond of Burlington Township.

UNITED STATES OF AMERICA,
County of Coffey, State of Kansas:

Burlington Township, in the county of Coffey, State of Kansas, promises to pay John S. Stow, or bearer, the sum of five hundred dollars on the third day of December, A. D. 1877, and interest thereon at the rate of ten per cent. per annum, payable semi-annually upon presentation of the coupons therefor, hereto annexed; both principal and interest payable at the banking-house of Northrup & Chick, in the city of New York.

This bond is one of an issue of eight thousand dollars, made for the purpose of aiding internal improvements in said township, and in pursuance of an act of the legislature of the State of Kansas entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict
19 therewith," approved March 2d, 1872.

In testimony whereof the township trustee, clerk, and treasurer have caused this bond to be issued, duly signed, attested, and countersigned this third day of December, A. D. 1872.

H. R. FLOOK, *Trustee.*

Attest: G. N. MCCONNELL, *Clerk.*
Countersigned: H. L. JARBOE, *Treasurer.*

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that such a bond has been duly registered in my office, in accordance with an act of the legislature entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

Witness my hand and official seal this 20th day of January, 1873.

D. W. WILDER,
Auditor of the State.

The following is a copy of one of the coupons, to wit:

$25.00. No. 3.

The treasurer of Burlington Township, Coffey County, Kansas, will pay to bearer twenty-five dollars, at the banking-house of Northrup & Chick, in the city of New York, on the third day of June, A. D. 1874, for six months' interest on bond No. 1, issued on the third day of December, A. D. 1872.

H. R. FLOOK,
Township Trustee.

Attest: G. N. McCONNELL,
Township Clerk.

20 The defendant filed an answer, of which, omitting the title thereof, the following is a copy, to wit:

The defendant says:

First defense. In answer to plaintiff's petition, that it denies each and every allegation therein contained.

The said defendant, further answering, says:

Second defense. That on the 6th day of August, A. D. 1872, in the said township of Burlington, in the county of Coffey and State of Kansas, a special election was then and there had and held for the purpose of submitting to the electors of said township the following proposition, to wit: "Shall the township of Burlington issue to John S. Stow, of said township and county, the bonds of said township to the amount of eight thousand ($8,000.00) dollars, to aid the said John S. Stow in the construction and completion, and to furnish the motive-power of a custom-grist mill at the town of Burlington, under the conditions as follows: Said bonds are to be made payable in four equal installments of two thousand ($2,000.00) dollars each, in five, six, seven, and eight years respectively, with interest as shall be determined by the board of officers issuing the same? Upon the issue of said bonds as aforesaid, said John B. Stow shall execute to said township his promissory notes for like amounts, to run the same time, bearing the same rates of interest, and secure the payment of said several notes by first mortgage on his said mill, and grounds on which the same is situate; the proceeds of said bonds are to be used exclusively in the completion of said work of internal improvement and in paying the outstanding debts and
21 liabilities incurred upon said work of internal improvement so far as said mill and machinery and improvements have progressed." And that the returns of said special election showed that a majority of the qualified electors of said township of Burlington who voted at said election voted in favor of the issuance of said bonds of said township to said John S. Stow, for the purposes aforesaid and subject to the conditions as above set forth.

And that on the 3rd day of December, A. D. 1872, the trustee, clerk and treasurer of said Burlington Township, while pretending to act under and by virtue of the declared result of the special election held as aforesaid in said township, and also while pretending to act under the authority of an act of the legislature of the State of Kansas entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of *of* railroads, water-power, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2, 1872, executed and delivered to the said John S. Stow the bonds of said Burlington Township to the amount of eight thousand dollars, ($8,000.00,) the same being sixteen bonds, num-

bered from one to sixteen, inclusive, each and all of said bonds bearing date on the 3rd day of December, A. D. 1872, and being for the sum of five hundred dollars, ($500.00,) due as follows:

Bonds Nos. 1, 2, 3, and 4, due in five years from said date.
22 Bonds Nos. 5, 6, 7, and 8, due in six years from said date.
Bonds Nos. 9, 10, 11, and 12, due in seven years from said date.
Bonds Nos. Nos. 13, 14, 15, and 16, due in eight years from said date.

And each and all of said bonds bearing interest from their said date at the rate of ten per cent. per annum, payable semi-annually, and for which interest coupons were thereunto respectively attached.

And that on the third day of December, A. D. 1872, the above-named John S. Stow, for and in consideration of the aforementioned bonds of said township of Burlington, Kansas, executed and delivered to said township of Burlington his four certain promissory notes; of which said notes the following are respectively copies, to wit:

$2,000.00. BURLINGTON, COFFEY COUNTY, KANSAS,
December 3rd, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars on the third day of December, A. D. 1877, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received

(Signed) JOHN S. STOW.

$2,000.00 BURLINGTON, COFFEY COUNTY, KANSAS,
December 3rd, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars on the third day of December, A. D. 1878, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

23 (Signed) JOHN S. STOW.

$2,000.00 BURLINGTON, COFFEY COUNTY, KANSAS,
December 3rd, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars on the third day of December, A. D. 1879, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

(Signed) JOHN S. STOW.

$2,000.00. BURLINGTON, COFFEY COUNTY, KANSAS,
December 3d, A. D. 1872.

I promise to pay Burlington Township, in the county of Coffey, State of Kansas, or bearer, the sum of two thousand dollars on the third day of December, A. D. 1880, and interest thereon at the rate of ten per cent. per annum from date until paid, payable semi-annually, for value received.

(Signed) JOHN S. STOW.

And that to secure the payment of the four aforementioned promissory notes, the said John S. Stow and Levanche M. Stow his wife, on said 3d day of December, A. D. 1872, executed and delivered to said

Burlington Township a mortgage on the real estate and grounds whereon the said custom-grist mill was situated, to wit: upon lots numbered four, five, and six, (4, 5, and 6,) in block number forty, (40,) in the city of Burlington, in said township, which said mortgage was duly filed for record on the day of December, A. D. 1872, in the office of the register of deeds in and for said county of Coffey, and duly re-
24 corded in book of mortgages, on page , in his said office.

And that on the 20th day of January, A. D. 1873, each and all of said bonds were duly registered in the office of the auditor of state of the State of Kansas.

And that each and all of the bonds mentioned and described in said plaintiff's petition, and made a part thereof, are a part of the said series of sixteen bonds of said Burlington Township made and issued as aforesaid, and that each and all of the coupons for interest mentioned and described in said petition as forming the several causes of action therein stated, are a part of the coupons for interest attached to said bonds made and delivered to John S. Stow as aforesaid.

The defendant also says that said bonds were issued to aid a steam custom-grist mill not situated on a water-course or operated by water-power, in said township.

The defendant further says that on the 31st day of May, A. D. 1875, in the district court in and for said county of Coffey and State of Kansas, during the May term of said court, in a certain action wherein the said John S. Stow was plaintiff and P. K. Wadhams, trustee of Burlington Township, Coffey County, Kansas, and Burlington Township, Coffey County, Kansas, were defendants, said action being brought by said plaintiff to obtain an order and decree for the delivery up to him of the aforementioned promissory notes, then held by said township, and for the cancellation of said mortgage, the following proceedings were had in said cause, and the following order, decree, and judg-
25 ment were rendered in favor of said John S. Stow, and against the said Burlington Township, also defendant herein; of which the following is a full and true copy, to wit:

And now come the said parties, by their attorneys, and thereupon this action comes on for trial by the court, a jury being waived, upon the petition of the said plaintiff and the answer of the said defendants and the evidence, and was argued by counsel, and thereupon the court finds that the several allegations in said plaintiff's petition are true as alleged therein, and that the notes and mortgage mentioned therein were given by said plaintiff to said defendants without any consideration whatever, and are therefore null and void.

It is, therefore, ordered and adjudged by the court that said defendant, P. K. Wadhams, trustee of Burlington Township, Coffey County, Kansas, within ten days from this date deliver to said plaintiff the said notes and mortgage-deed described in said petition, and that the said mortgage be cancelled on the records of said county, and that said P. K. Wadhams, trustee of Burlington Township, Coffey County, Kansas, and said Burlington Township, or any other person holding under them, be forever enjoined against setting up any claim whatever by reason of the said notes and mortgage-deed.

The said defendant further says that the said four promissory notes have, in accordance with said order and judgment, been by it delivered up to the said John S. Stow, and said mortgage-deed has been cancelled on the records of said county of Coffey, and that for and on ac-
26 count of said series of bonds of said township, together with the

coupons for interest thereunto attached as aforesaid, it has received no valuable consideration or thing whatsoever.

The said defendant therefore prays judgment in its behalf for costs herein against said plaintiff, and for such other and further relief in the premises as the court may deem meet.

A. M. F. RANDOLPH,
Atty. for Deft.

The plaintiff filed a demurrer to the above answer, of which said demurrer, omitting the title thereof, the following is a copy, to wit:

The plaintiff demurs to the second count of defendant's answer, and for cause of demurrer says that the said count does not state facts sufficient to constitute a defence to the plaintiff's causes of action.

Wherefore plaintiff prays judgment.

A. L. WILLIAMS,
Atty. for Plff.

This cause came on to be heard on the said demurrer, and the court after argument and consideration thereof entered a judgment sustaining said demurrer, and afterwards, on final trial, for the plaintiff for the sum of $\$1{,}743\frac{72}{100}$.

On the hearing of the said demurrer the following points or questions arose, on which the judges were divided in opinion:

1. Does the second count of the defendant's answer set up a sufficient defence to the action?

27 2. Said bonds having been issued to aid a steam custom-grist mill not situated on a water-course or operated by water-power, was there any power or authority to issue the same?

3. If there was no such power or authority, are the bonds containing the recital therein appearing valid in the hands of a holder thereof for value before maturity, who has no notice of the purpose for which the same were issued other than as shown by the face of the bonds?

The foregoing points on which the judges disagreed have been stated during the term under the direction of the judges & certified as aforesaid, & it is ordered that this certificate shall be entered of record.

JOHN F. DILLON. [SEAL.]
C. G. FOSTER. [SEAL.]

28

29 *Copy of bond.*

Supreme Court of the United States.

ALFRED W. BEASLEY, PLAINTIFF,
vs.
THE TOWNSHIP OF BURLINGTON, IN THE COUNTY of Coffey and State of Kansas, defendant.

Know all men by these presents, that we, , are held and firmly bound unto Alfred W. Beasley in the sum of two hundred ($200) dollars, to be paid to the said Alfred W. Beasley or his assigns; to the payment well and truly to be made, we hereby bind ourselves, and each of us, jointly and severally, and our heirs and executors and administrators, firmly by these presents. Dated this 14th day of June, A. D. 1876.

Whereas the above-named Township of Burlington, in the county of Coffey and State of Kansas, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Kansas: Now, therefore, the condition of this obligation is such that if the above-named Township of Burlington, in the county of Coffey and State of Kansas, shall prosecute its said writ of error to effect, and answer all costs if it shall not make good its plea, then this obligation shall be void, otherwise the same shall be in full force and virtue.

A. M. F. RANDOLPH.
A. HAMMATT.

Approved by me this 14th day of June, 1876.

JOHN F. DILLON, *Judge.*

30 (Endorsed:) No. 1486. Alfred W. Beasley vs. The Township of Burlington, in the county of Coffey and State of Kansas. Bond. Filed June 14, 1876. A. S. Thomas, clerk.

31 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy, from the record, of all the proceedings had in the action of Alfred W. Beasley vs. The Township of Burlington, in the county of Coffey and State of Kansas, No. 1486, in said court, except the sixty-three counts in petition left out as per stipulation herein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said district of Kansas, this 12th day of August, A. D. 1876.

[SEAL.] A. S. THOMAS, *Clerk.*

32

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Alfred W. Beasley, plaintiff, and the Township of Burlington, in the county of Coffey and State of Kansas, defendant, a manifest error hath happened, to the great damage of the said defen'ant, as by complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceed-

ings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this 14 day of June, A. D. 1876.

[SEAL.]

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

34 (Indorsed:) No. 1486. Alfred W. Beasley, plaintiff. vs. The Township of Burlington, in the county of Coffey and State of Kansas, defendant. Writ of error. Filed June 14, 1876. A. S. Thomas, clerk.

35 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

To Alfred W. Beasley:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden in the city of Washington, in the District of Columbia, on the second Monday in October, A. D. 1876, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas wherein the Township of Burlington, in the county of Coffey and State of Kansas, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 14th day of June, A. D. 1876.

JOHN F. DILLON.

36 STATE OF KANSAS,
County of Shawnee, ss:

Alfred W. Beasley, defendant in error, hereby acknowledges service of the within citation, and agrees to appear to the action therein named, at the time and place named, this 26th day of June, A. D. 1876.

A. L. WILLIAMS,
Atty. for A. W. Beasley.

(Indorsed:) Circuit court of U. S., dist. of Kansas. Township of Burlington, Coffey Co., Kansas, piff. in error, vs. Alfred W. Beasley, deft. in error. No. 1486. Citation. Filed June 26, 1876. A. S. Thomas, clerk.

(Indorsement on cover:) No. 680. The Township of Burlington, in the county of Coffey, plaintiff in error, vs. Alfred W. Beasley. Kansas C. C. U. S. Filed 25th August, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1876.

THE TOWNSHIP OF BURLINGTON, IN THE COUNTY OF COFFEY, AND STATE OF KANSAS, *Plaintiff in Error*,

vs.

ALFRED W. BEASLEY, *Defendant in Error.*

ARGUMENT OF A. M. F. RANDOLPH,

Attorney for Plaintiff in Error.

GEO. W. MARTIN, KANSAS PUBLISHING HOUSE, TOPEKA.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1876.

THE TOWNSHIP OF BURLINGTON, IN THE COUNTY OF COFFEY, AND STATE OF KANSAS, *Plaintiff in Error,*

vs.

ALFRED W. BEASLEY, *Defendant in Error.*

ARGUMENT OF A. M. F. RANDOLPH,
Attorney for Plaintiff in Error.

STATEMENT OF THE CASE.

This was a suit brought in the Circuit Court of the United States for the District of Kansas, at the June Term thereof, A. D. 1876, by Alfred W. Beasley against the Township of Burlington, in the County of Coffey, and State of Kansas, to recover the amount due upon sixty-four coupons, each for the sum of twenty-five dollars, together with interest thereon — the same being overdue. Of these coupons, as well as of the bonds to which they had been originally attached, the said Beasley averred himself to have become the true and lawful owner and holder for value before maturity, and also, to be such owner at the commencement of his suit as aforesaid.

The bonds to which these coupons had been attached are a part of a certain series of sixteen bonds, each for the sum of $500, the whole amounting to the sum of eight thousand dollars, issued by said township December 3d, 1872, to aid one John S. Stow in the construction and completion and to furnish the motive power of a steam custom grist-mill in said township — the same belonging to the said Stow, and not being situated on a water-course, or operated by water-power.

A copy of one of said bonds is as follows, to wit:

$500. No. 1.

BOND OF BURLINGTON TOWNSHIP.

COUNTY OF COFFEY, STATE OF KANSAS.

UNITED STATES OF AMERICA.

BURLINGTON TOWNSHIP, in the County of Coffey, State of Kansas, promises to pay John S. Stow, or bearer, the sum of Five Hundred Dollars, on the third day of December, A. D. 1877, and interest thereon at the rate of ten per cent. per annum, payable semi-annually, upon presentation of the coupons therefor, hereto annexed: both principal and interest payable at the banking house of Northrup & Chick, in the city of New York.

This Bond is one of an issue of Eight Thousand Dollars, made for the purpose of aiding internal improvements in said township, and in pursuance of an act of the Legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872.

In testimony whereof, the Township Trustee, Clerk and Treasurer have caused this bond to be issued, duly signed, attested and countersigned, this third day of December, A. D. 1872. H. R. FLOOK, *Trustee.*

Attest: G. N. MCCONNELL, *Clerk.*

Countersigned: H. L. JARBOE, *Treasurer.*

A copy of the above bond was attached to and made a part of said Beasley's petition.

The following is a copy of one of the coupons sued upon, to wit:

$25.00. No. 3.

The Treasurer of Burlington Township, Coffey County, Kansas, will pay to the bearer Twenty-five Dollars, at the banking house of Northrup & Chick, in the city of New York, on the third day of June, A. D. 1874, for six months' interest on Bond No. 1, issued on the third day of December, A. D. 1872.

Attest: G. N. McConnell, *Township Clerk.*
H. R. Flook, *Township Trustee.*

A copy of the certificate of registration, indorsed upon each of said bonds, is as follows, to wit:

I, D. W. Wilder, Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine; and that such a bond has been duly registered in my office, in accordance with an act of the Legislature, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, ———— or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872.

Witness my hand and official seal, this 20th day of January, 1873.

{Seal of the Auditor of State. Kansas.—Jan. 29, 1861.} D. W. Wilder, *Auditor of State.*

The township set up two defenses; the second defense — the only one to be considered here — being, in substance, that on the 6th day of August, A. D. 1872, in the said township of Burlington, a special election was then and there held for the purpose of submitting to the electors of said township the following proposition, to wit:

"Shall the township of Burlington issue to John S. Stow, of said township and county, the bonds of said township to the amount of eight thousand ($8,000) dollars, to aid the said John S. Stow in the construction and completion and to furnish the motive power of a custom grist-mill at the town of Burlington, under the conditions as follows: Said bonds are to be made payable in four equal installments of two thousand ($2,000) dollars each, in five, six, seven and eight years, respectively, with interest as shall be determined by the board of officers issuing the same. Upon the issue of said bonds as aforesaid, said John S. Stow shall execute to said township his promissory notes for like amounts, to run

the same time, bearing the same rate of interest, and secure the payment of said several notes by first mortgage on his said mill and grounds on which the same is situate. The proceeds of said bonds are to be used exclusively in the completion of said work of internal improvement, and in paying the outstanding debts and liabilities incurred upon the said work of internal improvement, so far as said mill and machinery and improvements have progressed."

That a majority of the qualified electors of said township, voting at said election, voted in favor of the issuance of said bonds for the purpose aforesaid, and subject to the conditions above set forth.

That on the 3d day of December, A. D. 1872, the officers of said township, assuming to act under and by virtue of the election held as aforesaid, and also, assuming to act in pursuance of the above-entitled act of the Legislature of the State of Kansas, approved March 2, 1872, executed and delivered to the said John S. Stow the bonds of said township to the amount of $8,000 — the same being sixteen bonds, numbered from 1 to 16 inclusive, each bond bearing date the third day of December, A. D. 1872, and being for the sum of $500, due as follows: Bonds Nos. 1, 2, 3 and 4, due in five years from said date; Bonds Nos. 5, 6, 7 and 8, due in six years from said date; Bonds Nos. 9, 10, 11 and 12, due in seven years from said date; Bonds Nos. 13, 14, 15 and 16, due in eight years from said date; — each and all of said bonds bearing interest from date at the rate of ten per cent. per annum, payable semi-annually, and for which interest coupons were thereunto respectively attached: both principal and interest payable at the banking house of Northrup & Chick, in the city of New York.

That for and in consideration of said bonds, the

above-named John S. Stow executed and delivered to said township his four certain promissory notes, each for $2,000, in accordance with the terms of the aforesaid proposition; and, to secure the payment of said notes, with interest, executed a mortgage upon his said mill and the grounds upon which said mill is situate.

That said bonds were issued to aid a STEAM CUSTOM GRIST-MILL, not situated on a water-course or operated by water power.

That each and all of the bonds mentioned and described in plaintiff's petition are a part of the said series of sixteen bonds of said township, made and issued as aforesaid.

That each and all of the coupons mentioned and described in said petition, and constituting the several causes of action therein stated, are a part of the coupons for interest originally attached to the bonds made and delivered to John S. Stow as aforesaid.

That on the 31st day of May, A. D. 1875, in the District Court in and for said County of Coffey and State of Kansas, in a certain action wherein the said John S. Stow was plaintiff and the said Township of Burlington was defendant, said action having been brought by said plaintiff to obtain an order and decree for the delivery up to him of the aforementioned promissory notes, and for the cancellation of said mortgage on the records of said county, on the trial of said cause the court found that said notes and mortgage were given by said John S. Stow to said township without any consideration whatever, and that the same are null and void; that the court ordered and adjudged that said notes be delivered up to said plaintiff, and that the mortgage deed given to secure their payment be cancelled

on the records of said county, which said order and judgment were thereafter by said township duly complied with; and that for and on account of said series of bonds, together with the coupons for interest thereunto attached as aforesaid, the said Township of Burlington has received no valuable consideration whatsoever.

To this second defense in defendant's answer, the plaintiff Beasley demurred, and for cause of demurrer said: that the said count does not state facts sufficient to constitute a defense to the plaintiff's causes of action.

This cause came on to be heard on the said demurrer, and the court, after argument and consideration thereof, entered a judgment sustaining said demurrer; and afterwards, on final trial, a judgment for the said Alfred W. Beasley and against the said Township of Burlington for the sum of $—— and the costs of suit.

On the hearing of the said demurrer, three points or questions arose, on all of which the judges were divided in opinion; these questions — the only ones before this court — being as follows, to wit:

"*First:* Does the second count of the defendant's answer set up a sufficient defense to the action?

"*Second:* Said bonds having been issued to aid a steam custom grist-mill, not situated on a water-course or operated by water-power, was there any power or authority to issue the same?

"*Third:* If there was no such power or authority, are the bonds containing the recital therein appearing, valid in the hands of a holder thereof for value before maturity, who has no notice of the purpose for which the same were issued, other than as shown by the face of the bonds?"

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns as error the ruling of the Circuit Court in sustaining the demurrer of the

defendant in error to the second count in the answer of the plaintiff in error; and on final trial entering a judgment for the said Alfred W. Beasley and against the said Township of Burlington.

ARGUMENT.

It is submitted that if both the second question and the third be answered in the negative, then that the second count in the defendant's answer sets up a sufficient defense to the action.

Concerning the second question, to wit:

"Said bonds having been issued to aid a steam custom grist-mill, not situated on a water-course or operated by water-power, was there any power or authority to issue the same?"

The trustee, clerk and treasurer of the Township of Burlington, in making and delivering the bonds in controversy, assumed to act under and by virtue of the election held in said township as aforesaid, and also in pursuance of the before-mentioned act of the Legislature of the State of Kansas, approved March 2, 1872, section 3 of which is as follows, to wit:

"Before any bonds shall be issued, as herein provided, the same shall be ordered by a vote of the qualified electors of such county, city or township."

It is plain that the authority to issue bonds thereunder is made conditional upon a prior authorization of such act by a vote of the qualified electors of the county, city or township to be affected thereby; and that the statute is so framed as to show the legislative intention to be, that no power to issue bonds — or, at least, no authority to exercise such power — shall exist unless this be done. A county, city or township does not practically possess this power, until it is conferred by the assent of the qualified voters, to be given in the

way pointed out by law. The real authority comes from the voters at the polls. The officers named in section 2 of the statute do not become the agents of a county, city or township, respectively, for the issuance of bonds, until the same have been ordered by the vote prescribed; and these officers have no powers except those which are granted, defined and limited by law; and, like other agents, they must pursue their authority and act within the scope of their power.

Steines v. Franklin County, 48 Mo., 168.
Carpenter v. The Inhabitants of Lathrop, 51 Mo., 493, 496.

Of agencies of this sort, in Dillon on Municipal Corporations, section 419, the author says:

"Officers are the agents of the corporate body; and the ordinary rules and principles of the law of agency are applicable to their acts. Their unauthorized acts are not binding upon the corporate body of which they are the public agents. Ordinarily, their unauthorized representation that they have power to do an act is not binding upon the corporation; that is, the question is as to their power, *in fact and in law*, not what they represented it to be. The only exception to this rule in addition to the one above suggested, to wit, where it is the sole province of the officers who issued the bonds to decide whether conditions precedent have been complied with, is where both parties have not equal means of knowledge as to the extent and scope of their powers, and where the particular character of their commission and authority is, from its nature and circumstances, peculiarly known to the officer or agent; in which case, the principal will, or may be bound by the false representations of the agent respecting his authority and its extent and scope; but where the authority to act is solely conferred by statute, which, in effect, is the letter of attorney of the officer, all persons must, at their peril, see that the act of the agent on which they rely, is within the power under which the agent acts; and this doctrine is recognized by the Supreme Court of the United States in some of its judgments."

The Floyd Acceptances, 7 Wall., 666.
Marsh v. Fulton County, 10 Wall., 676.
See, also, *Clark v. Des Moines*, 19 Iowa, 199, 210.
Treadwell v. Commissioners, 11 Ohio St., 183.
United States v. City Bank of Columbus, 21 How., 356.

Whether these are the bonds of the township or not, depends not upon the recital therein, but upon the fact whether a majority of the legal voters voting at an election held in the manner prescribed, and for a PURPOSE authorized, by the act, ever gave their assent to them. To say that the township officers had the power to bind the township because they recited that they had, is assuming the whole issue. It is the fallacy of reasoning in a circle. The real facts lie back of all this, and to them we must go to ascertain whether these are the bonds of the township at all or not.

In the language of Chief Justice DIXON, in the case of *Veeder v. The Town of Lima*, (19 Wis., 317, 318):

"The same train of reasoning applies to the objection that the instrument is negotiable in its character, and therefore cannot be impeached. The question whether it is the bond of the town or not, must first be approached and determined. Upon this point I quote briefly from the notes of Professor Dwight above referred to. [*Gould v. The Town of Sterling*, 1 Am. Law Reg. (N. S.), 297.] He says: 'It seems entirely clear that no representations by an agent can ever establish the fact of agency. This proposition is true without qualification, both at law and in equity. If a person who is not in fact authorized, represents that he has power to execute a promissory note for another, the instrument, so far as the supposed principal is concerned, is utterly void. The negotiability of the note will have no effect upon the question, as the inquiry turns upon the existence of the note itself. The term "negotiability" presupposes the existence of an instrument made by a person having *capacity or power* to contract in that particular manner. Instruments made by infants, married women, insane persons, or others without capacity to make binding contracts, gain no additional validity because they may assume the form of negotiable paper. It is entirely immaterial whether the incapacity or want of power is general, or extends only to the particular act in controversy. For similar reasons, an agent can no more enlarge his powers by means of unauthorized representations than he can create them. [*New York Life Insurance and Trust Co. v. Beebe*, 3 Selden, 364.] The inquiry then must

be confined to the question, What has the *principal said or done* which bears upon the supposed agency? If the power cannot be derived from his representations or acts, it cannot exist at all.' And so it is here. If this instrument is the bond of the town, it is because the acts of the voters have made it so. For the voters are the principals and the township officers the agents, having no power to act except upon the conditions specified in the statute."

Did the vote upon the proposition before mentioned confer upon the trustee, clerk and treasurer of Burlington Township any power or authority to issue these bonds to aid in the construction and completion and to furnish the motive power of a steam custom grist-mill, not situated upon a water-course or operated by water-power — the same belonging wholly to a private person and being controlled by him for his own personal profit, and not for the public benefit? If so, then these bonds might, with equal reason, have been voted and issued to aid John S. Stow in building a saw-mill, or a hotel, or a grocery, or a dramshop in said township.

It does not appear that there was anything peculiar and transcendental about Stow's custom grist-mill to justify the loan made in the manner aforesaid; nor is there any reason why it should not stand in the same category with other grist-mills which have been, and will be built, and other laborious industries, which are pursued for private gain and emolument. This grist-mill was no more for the public use than any other industry in the township, the benefit of which incidentally results to the public, but which is carried on for private gain. The owner thereof, because of the bonds bestowed upon him, did not agree to grind without toll all grists brought by those who were to be burdened by taxes for the payment of said bonds; nor did he give to the township in exchange therefor any stock,

share or other interest in his said mill. This so-called "internal improvement" still continued to be his own private property, and to be carried on for his own use and advantage; and for the aid thus given, he returned no consideration whatever to the township.

Not only is the *purpose* for which these bonds were voted and issued not one of the purposes contemplated by the act, but it is, also, to be observed that the requirements of sections 9, 10 and 11 of the act were wholly disregarded by the officers who executed the instruments in suit.

These sections are as follows:

"SEC. 9. If the majority of the votes cast at any such election be in favor of the proposition and the issuing of bonds, then the officers of such county, city or township, if the proposition be for the building of a bridge, or for other works of internal improvement, except railroads, for which bonds were voted, shall, without delay, give notice, by publication in some newspaper of general circulation, published in the county, for at least twenty days, or, if there be no such newspaper published in such county, such notice shall be given by posting up written or printed notices for the same length of time, in at least three public places in the county, city or township wherein such bridge is to be built, or other work of internal improvement as aforesaid is to be constructed, and by giving such other notice as such officers may direct, that sealed proposals will be received until a certain hour of a day named in such notices, not to exceed thirty days thereafter, for the building of such bridge or the construction of such other work of internal improvement; which notices shall set forth the location of such proposed bridge or other work of internal improvement, with such particularity that an inspection of the premises may be had without difficulty. Proposals for the building of any such bridge or other work of internal improvement shall be accompanied with complete plans and specifications of the same; the price to be charged therefor in the bonds of such county, city or township, at par value; together with a bond or undertaking, with good and sufficient security in double the amount of the proposed cost thereof, conditioned for the faithful execution of the work proposed, and the carrying into effect of any contract made in reference thereto. That if the proposition voted for be to aid in the construction of a railroad (either by donation thereto or the taking of stock therein) or other work of internal improvement, then the proper officers of such county, city or township shall at once subscribe upon the books of such railroad, specifically setting forth the conditions upon which such subscription is

made, the amount of such donation thereto, stock taken therein, or bonds voted therefor.

"SEC. 10. The officers of any county, city or township are hereby fully authorized and empowered to enter into any and all contracts necessary to carry into effect the provisions of this act.

"SEC. 11. That if the proposition for which bonds were voted be to aid in the construction of a railroad, or any bridge or other work of internal improvement, either by donation thereto or the taking of stock therein, then upon the subscription being made therefor, as hereinbefore provided, the officers of such county, city or township [shall thereupon issue the bonds of such county, city or township] for the amount of such subscription, and shall forthwith deliver the same, together with the original, or a copy of the subscription, setting forth its terms in full, to the Treasurer of State; which said bonds shall be held by the said Treasurer of State in escrow until the conditions in the terms of the said subscription to such railroad or other work of internal improvement shall be in all things fully complied with. That upon the conditions of the said subscription being in all things fully complied with, then the Treasurer of State shall deliver such bonds to the parties entitled thereto, who shall have the same registered as hereinafter provided: *Provided*, That such bonds shall not bear interest or be negotiable until after the delivery and registration thereof: *And provided further*, That in case of a failure to comply with the conditions in the terms of such subscription, then such bonds shall be by the said Treasurer of State cancelled, and redelivered to the county, city or township issuing the bonds: *And provided further*, That this section shall not apply where the people may have named some party as trustee in their vote on the proposition, and the contractor may thereafter agree to the same."

This entire transaction between the township and one of its own citizens was in substance a loan made by the former to the latter, to enable him to carry on business for his own personal gain and advantage — the object of the loan and the conditions prescribed for its payment being utterly unauthorized by the act under color of which these things appear to have been done.

The language of Chief Justice APPLETON, in the case of *Allen v. Inhabitants of Jay*, (60 Me., 131,) is here applicable:

"The alleged justification for raising money to be loaned to private individuals for their own profit, arises from the

supposed public benefit to be made of the money so loaned. But the moment the loan is effected, the bonds and the money raised from their sale become the bonds and money of the person borrowing, and subject to his control. The town has lost all power over the use and disposition of its loan. True, it may sue for any violation of the contract, if any is made, in reference to the manner of using the bonds or money loaned. The loan, when once made, becomes like all other loans. The borrower has it. It is his. The loan effected, there is the end of the matter."

Mr. Justice FIELD (in whose opinion concurred the CHIEF JUSTICE, and GRIER and MILLER, JJ.), dissenting in the case of *Rogers v. Burlington*, (3 Wall., 669,) says:

"The power granted must be exercised for the *purpose* designated; it is limited to the objects to be accomplished, to the sphere of action prescribed by the charter. If it be given for the construction of a city building, it cannot be exercised for the construction of a city railroad; if it be allowed for the establishment of a public library, it cannot be exerted for the opening of a public market; if it be conferred to enable the corporation to borrow money, it cannot be used to enable the corporation to lend money, or to lend its credit.

"These observations are legal truisms. They are elementary principles. They are recognized by all the authorities both of England and America. They are controverted in none, and they envelop the present case on all sides."

The election provided for in the act, in pursuance of which it is pretended that these bonds were made and delivered to John S. Stow and their payment secured in the manner aforesaid, must be held for the purpose of aiding some work of internal improvement which is within the meaning of the statute. Such a work must be of a public character. An election held to aid a work not of the public nature prescribed, is equivalent to *no* election — is a nullity — and confers no power or authority whatever.

It being clearly beyond the legislative power, by force

of an enactment, to make that public which is essentially private, it plainly appears that the grist-mill in question is not to be regarded as "a work of internal improvement" within the meaning of the act under which these bonds purport to have been made.

Stow's mill seems to have been considered by the inhabitants of Burlington Township as a sort of private eleemosynary institution which they felt should be aided, mainly for its owner's sake, and incidentally for the public good. Feeling thus, and seeing Stow in debt and distressed for want of means to construct and complete and to furnish the motive power for his work of "internal improvement" already begun, and to pay off and discharge the liabilities by him incurred thereon, they benevolently and with cheerful alacrity *voted* upon the before-mentioned proposition, and then — rested. It appearing that of those voting, a majority had voted in favor of the aid proposed, the trustee, clerk and treasurer of the township assuming to have become, by reason of this vote, the agents of the corporation, made and delivered the *quasi*-bonds in controversy — instruments which might, with equal authority, have been signed by a justice of the peace, attested by a constable and countersigned by the town-crier of the township, and by these officers delivered to anybody who would take them.

"This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instruments might, for such reason, be taken without special inquiry into their validity. It is a case where the power to contract never existed — where the instruments might, with equal authority, have been issued by any other citizen of the county [township]. It is a case, too, where the holder was bound to look to the action of the officers of the county [township], and ascertain whether the law has been so far

followed by them as to justify the issue of the bonds. The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder."

Marsh v. Fulton County, 10 Wall., 683.
See, also, Dillon on Mun. Corp., sec. 426, and *note 3*.

These bonds having been issued by the Township of Burlington in aid of a strictly private enterprise, are void — void from the beginning, and void into whosesoever hands they may have come.

Commercial Bank v. City of Iola, 2 Dillon's Ct. Ct. Rep., 353.
Allen v. Inhabitants of Jay, 60 Me., 124; and *note* thereto by Judge REDFIELD, 12 Am. Law Reg., (N. S.), 493.
Lowell v. Boston, 111 Mass., 454.
Opinions of Judges, 58 Me., 590, 596.
Loan Association v. City of Topeka, 20 Wall., 655, 660.

THE RECITAL.

Concerning the third question, to wit:

"If there was no such power or authority, are the bonds containing the recital therein appearing, valid in the hands of a holder thereof for value before maturity, who has no notice of the purpose for which the same were issued, other than as shown by the face of the bonds?"

Even though there was no power or authority to issue these bonds for the purpose for which they were in point of fact made, still, it is earnestly contended that Beasley, being a holder thereof for value before maturity, had a right to assume, from the mere fact that they were issued, that the conditions on which the township was authorized to issue them had been complied with, and that a recital in the bonds that they had been made for the purpose of aiding internal improvements in said township of Burlington, and in pursuance of an act of the Legislature of the State of Kansas, entitled "An act to authorize counties, "incorporated cities and municipal townships to issue bonds "for the purpose of building bridges, aiding in the con-

"struction of railroads, water power, or other works of "internal improvement, and providing for the registration "of such bonds, the registration of other bonds, and the "repealing of all laws in conflict therewith," approved March 2, 1872, amounts to an *estoppel in pais* upon the township, of which the officers issuing the bonds were the public agents.

The main case cited in support of the above view is that of *The Commissioners of Knox County v. Aspinwall*, (21 How., 539,) — the same being a leading case on the subject of the liability of municipal and public corporations on their negotiable railway-aid bonds. This action was by a *bona fide* holder for value of certain coupons attached to bonds issued by Knox county, Indiana, in payment of a subscription to railroad stock.

The defense set up and relied on in this case was that the defendant, the board of commissioners, possessed no authority to execute, or to authorize to be executed, the bonds or coupons in question; and hence, that they were obligations not binding upon the county of Knox, which that board represented. By statute, the county commissioners were authorized "to take stock in the "railroad, payable in county bonds, *provided a majority* "*of the qualified voters* of said county, at a designated "election, *shall vote for the same.*" The ground upon which the want of authority to execute the bonds was placed by the county was the omission to comply with the requisition of the statute in respect to the *notices* for the election (which the statute provided should be held on a fixed day), at which a vote was to be taken for and against a subscription to the stock of the railroad company. It was admitted in the case that the required notices were not given; and the court seemed

to concede "that this would be decisive against the "authority of the county to issue the bonds, were it "not for the question which underlies it; and that is, "Who is to determine whether or not the election has "been properly held, and a majority of the votes of the "county cast in favor of the subscription? Is it," the court inquires, "to be determined by the court, in this "collateral way, in every suit upon the bond, or coupon "attached, or by the board of commissioners, as a duty "imposed upon it before making the subscription?"

The court were of the opinion, and so decided, that "where the statute of a State provided that the board "of commissioners of a county should have power to "subscribe for railroad stock, and issue bonds therefor, "in case a majority of the voters of the county should "so determine after a certain notice should be given of "the time and place of election, and the board sub-"scribed for the stock and issued the bonds, purporting "to act in compliance with the statute, it is too late to "call in question the existence or regularity of the notices "in a suit against them by the holders of the coupons "attached to the bonds, who were innocent holders, in "this collateral way.

"In such a suit, according to the true interpretation "of the statute, the board were the proper judges whether "or not a majority of the votes in the county had been "cast in favor of the subscription to the stock."

The court, in assigning the reasons for these holdings, speaking through Mr. Justice NELSON, say:

"The right of the board [of county commissioners] to act in execution of the authority [conferred by the statute] is placed upon the fact that a majority of the votes had been

cast in favor of the subscription; and to have acted without first ascertaining it, would have been a clear violation of duty; and the ascertainment of the fact was necessarily left to the inquiry and judgment of the board itself, as no other tribunal was provided for the purpose. The board was one, from its organization and general duties, fit and competent to be the depository of the trust thus confided to it. The persons composing it were elected by the county, and it was already invested with the highest functions concerning its general police and fiscal interests."

"We do not say," he adds, "that the decision of the board would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the power, and before the rights and interests of third parties had attached; but after the authority has been executed, the stock subscribed, and the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a *bona fide* holder of the bonds, in this collateral way."

But as sustaining the decision of the court in the above case, a further position by way of argument is taken, which will appear by the following extract:

"Another answer," continues Mr. Justice NELSON, "to this ground of defense is, that the purchaser of the bonds had a right to assume that the vote of the county, which was made a condition to the grant of the power, had been obtained, from the fact of the subscription by the board to the stock of the railroad company, and the issuing of the bonds. The bonds, on their face, import a compliance with the law under which they were issued. 'This bond,' we quote, 'is issued in part payment of a subscription of $200,-'000, by the said Knox county, to the capital stock, &c., by 'order of the board of commissioners, in pursuance of the 'third section of the act, &c., passed by the General Assembly 'of the State of Indiana, and approved 15th January, 1849.'

"The purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power."

This principle has been reiterated and applied by the

Supreme Court of the United States in many subsequent cases, among which are the following:

Bissell v. City of Jeffersonville, 24 How., 287.
Moran v. Miami County, 2 Black, 722.
Mercer County v. Hacket, 1 Wall., 83.
Gelpcke v. City of Dubuque, 1 Wall., 175.
Meyer v. City of Muscatine, 1 Wall., 384.
Rogers v. Burlington, 3 Wall., 654.
Supervisors v. Schenck, 5 Wall., 772.
Pendleton County v. Amy, 13 Wall., 297.
City of Lexington v. Butler, 14 Wall., 282.
Grand Chute v. Winegar, 15 Wall., 356.
St. Joseph Township v. Rogers, 16 Wall., 644.

And, also, in the following cases recently decided in the Supreme Court:

Town of Venice v. Murdock;
Town of Coloma v. Evans;
Marcy v. Oswego Township;
(Vol. 3, Nos. 20 and 24, of *Central Law Journal.*)

It appears as follows: That in *Bissell v. City of Jeffersonville*, the common council were, by virtue of various statutes, authorized to subscribe for stock in a railroad company, and to issue bonds in payment therefor, *on the petition of three-fourths of the legal voters of the city.* Before the issue of the bonds, the council decided that three-fourths of the citizens had petitioned, — and under a subsequent act, authorizing them to revise the subject, they again came to the same conclusion, and elected to ratify and affirm the subscription theretofore made, and issued the bonds, reciting in each that it was issued by authority of the common council of the city, "three-"fourths of the legal voters of the city having peti-"tioned for the same as required by the charter." Duly certified copies of the record of the proceedings were exhibited to the plaintiffs at the time they received the bonds. The Supreme Court of the United States

held that the council was the tribunal to decide whether the requisite number had petitioned; that it was contemplated that this question, which was one of fact, should be ascertained and conclusively settled prior to the issue of the bonds; and that when sued upon the bonds by innocent holders for value, parol testimony was inadmissible to show that the petitioners did not constitute three-fourths of the legal voters of the city.

That in *Moran v. Miami County,* the bonds were delivered to the railway company, were received by it in payment of the certificate of stock, and the county of Miami was credited with $20,000 upon the certificate. The railroad company then offered them for sale, transferred them to purchasers as commercial securities by indorsement, and the plaintiff in error bought them in the full confidence that the consideration for which they had been issued was truly expressed on the face of the bonds. The county retained the stock certificate, and voted it on the election for directors as its own. Thus matters stood between the railroad company and the county of Miami, both being satisfied with what had been done, and that they had acted conformably to their respective powers, until the railroad ceased to pay to the holders the interest warrants.

It is declared in the bonds that they were issued by the board of commissioners of Miami county by order or resolution, pursuant to the statute authorizing the county to borrow money, passed at a regular meeting of the board, to be used by the Peru and Indianapolis Railroad, payable to the Company, or bearer, for a loan to the Company.

Upon the trial of this case, the defendants (commis-

sioners of Miami county) filed a plea of *non assumpsit*, and the plaintiff joined issue by a *similiter*. At the same time the defendants put in several pleas, affirming that several irregularities had been committed by the board of commissioners of Miami county and the Railroad Company, in their negotiation and proceedings for the issue of the bonds and interest warrants, by the force of which it was declared that the bonds were void in law, and that they were purchased by the plaintiff with notice of these irregularities.

But the court, referring to *Knox County v. Aspinwall*, as well as other cases, say:

"We think and adjudge that the recitals on the bonds are conclusive, constituting an estoppel *in pais* upon the defendants in this suit."

The court further say:

"A county or other municipal corporation being authorized by statute to borrow money and issue bonds for the payment thereof, if the bonds be made and delivered reciting the facts, which show them to have been regularly issued, the county is estopped to deny their regularity or to assert that they were not made in conformity to the statute."

That in *Mercer County v. Hacket*, the action was upon coupons, payable to bearer, belonging to negotiable bonds issued by a county in payment of stock subscribed in a railroad company. By an act of Assembly, passed in 1852, the Legislature of Pennsylvania authorized the commissioners of Mercer county in that State to subscribe to the stock of the Pittsburg and Erie Railroad, which road, if built, would pass through their county and benefit it. The act, however, contained in substance this proviso: that the subscription shall be made subject to the following "restrictions, limitations, and conditions, "and in no other manner or way whatever:"

1. "*After*, and not *before*, the *amount* of such sub-"scription shall have been designated, advised and rec-"ommended by a grand jury of said county."

2. "Such bonds shall, in no case, be *sold*, *assigned*, "or *transferred* by the said Railroad Company *at less* "*than the par value thereof.*"

3. That the acceptance of this act shall be deemed the acceptance of another act, fixing the gauges of railroads in the county of Erie.

The plaintiff was a *bona fide* holder, for value, of a number of the bonds issued by the county. To defeat a recovery, the county on the trial offered to show, not that *no* recommendation by a grand jury was ever made, but that no *such* recommendation was made as the act required. The following was the recommendation: The grand jury would "recommend [omitting the words "des-"ignate and advise"] the commissioners of Mercer "county to subscribe an amount not exceeding $150,-"000,"—but not otherwise designating the amount. The bonds referred on their face to the act of Assembly and its date which authorized their issue, and recited that they were issued in pursuance thereof. This was regarded by the court, not as an offer to show "that "no law exists to authorize their issue, but as one to "show that the recitals in the bonds are not true, "and to show that they were *not* made 'in pursuance "of the acts of the Assembly' authorizing them;" and following *Knox County v. Aspinwall*, it was adjudged that the matters thus offered to be shown constituted no defense against a *bona fide* holder, on the principle that "where bonds on their face import a compliance "with the law under which they were issued the pur-"chaser is not bound to look further."

That in *Gelpcke v. City of Dubuque*, the whole case resolved itself into a question of the power of the city to issue bonds for the following purpose, namely, to aid in the construction of the Dubuque Western and the Dubuque, St. Peter's and St. Paul Railroads. The court held that under certain statutes passed by the Legislature of the State of Iowa, ample authority was given to the city of Dubuque to issue the bonds in question.

In this case, the court, speaking through Mr. Justice SWAYNE, decide, and refer to the case of *Commissioners of Knox County v. Aspinwall* as also deciding, that —

"When a corporation has power, under any circumstances, to issue negotiable securities, the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such holder than any other commercial paper."

That in *Meyer v. City of Muscatine*, the court asserted the validity of certain bonds of the city of Muscatine, made payable to bearer, and issued to aid the construction of the Mississippi and Missouri Railroad, and in payment on stock subscribed in the name of the city to the capital stock of said railroad, when such bonds are in the hands of innocent holders for value.

The court say that —

"Where the votes of three hundred and twenty-six citizens were given in favor of a municipal loan, and of five only against it, and the city issued the bonds, no one interposing to prevent the issue, all parties acting in good faith, the city cannot afterwards object to the regularity of the preliminary proceedings, and set up that the vote was not taken in the form in which, under the charter, it ought to have been taken.

"If the legal authority under which the agents of the city in issuing the bonds, acted, was sufficiently comprehensive, a

holder of them *bona fide* and for value has a right to presume that all precedent necessary requirements have been complied with."

That in *Rogers v. Burlington*, the bonds were coupon bonds in the ordinary form; except in so far, perhaps, as they declared on their face that they were issued, by the city of Burlington, under Ordinance 44, to authorize a loan of city bonds, to the amount of $75,000 to the Burlington and Missouri Railroad Company, and as they contained a copy of the ordinance printed at large upon their back.

Certain of these instruments having come into the hands of one Rogers, a *bona fide* holder for value, and the interest being unpaid, he brought suit in the Circuit Court for Iowa to recover it. The defendant demurred, among other grounds, on the following:

1st. That the petition did not aver nor show that the city had any authority to issue the bonds therein described.

2d. That the bonds on their face showed that they were not issued for any municipal purpose, but as a loan of the credit of the city to the Burlington and Missouri River Railroad Company.

3d. That there was no law of the State of Iowa authorizing the city to issue such bonds, or to lend her credit to any railroad company.

The demurrer was sustained, and judgment rendered for the defendant. To review this judgment, the case was taken on writ of error to the Supreme Court of the United States, in which court the following points were decided:

"Power to 'borrow money for *any* public purpose,' gives authority to a municipal corporation to borrow money to aid

a railroad company, making its road as a way for public travel and transportation; and, as a means of borrowing money to accomplish this object, such municipal corporation may issue its bonds, to be sold by the railway company, to raise the money.

"Power to issue the bonds being shown, the municipal corporation, as against *bona fide* holders of them for value, is estopped to deny that the power was properly executed."

That in *Supervisors v. Schenck*, the board of supervisors of Marshall county in the State of Illinois, pursuant to a statute of that State authorizing counties to subscribe for shares in the capital stock of any railroad company incorporated or organized under any law of the State, in any sum not exceeding one hundred thousand dollars, on the 12th day of September, 1856, issued bonds to said amount, payable to the Western Air-Line Railroad Company, or order, with interest coupons annexed, for which bonds the said railroad company, at the same time, transferred stock to the said county in the same amount. The plaintiff Schenck alleged in his declaration that on the first day of July, 1857, he became the legal holder of thirty of those bonds, each for one thousand dollars, with the coupons thereto attached, by due indorsement and delivery.

His suit was brought to recover one year's interest on those bonds, which interest fell due on the 12th day of September, 1865 — nine years after the bonds were issued and eight years after the plaintiff became the holder of the same, and in the usual course of business.

The substance of the defense was, that the bonds were issued without authority, and were invalid, because the election to procure the consent of a majority of the qualified voters of the county was ordered to be held

by the county court of the county, and not by the board of supervisors of the county, as required by law; but it was admitted, among other things, that the election was properly conducted, and that the returns were duly made, and that the proceedings, in all other respects, were regular and correct.

It also appeared in this case, that the defendants (supervisors) had never rescinded, or attempted to rescind, the contract, and had never returned, or offered to return, the evidences of their ownership of the shares in the stock of the company, but had annually acknowledged the validity of the bonds by voting taxes for the payment of the accruing interest, and had actually paid the same.

All of the acts of the board of supervisors of the county in making the subscription, purchasing the shares, issuing the bonds, and exchanging the securities, appeared to have been open and well known to the corporation, and yet they had constantly suffered themselves to be represented in the choice of officers and in the management of all the affairs of the railroad company, and had voluntarily voted and paid taxes for the payment of the yearly interest on the bonds.

"Examined in the light of those suggestions," the court say, "it would be difficult to imagine a case where "the rule that a subsequent ratification is as good as a "previous authority, can be more justly applicable than "in the case under consideration."

The court say that the single question presented in the case is, whether the bonds specified in the declaration, and which were indorsed and delivered before maturity, are void in the hands of the plaintiff, who is the holder for value, and without notice of any

defect in the proceedings, because the order for the election in which the majority of the qualified voters of the county voted to subscribe for the stock of the railroad company and purchase the shares, was made by the county court, and not by the supervisors of the county.

Upon this question the court decided that "the levy "of a tax and payment of interest by the proper county "authorities, validates, in the hands of *bona fide* holders "for value, county bonds, issued in their origin, irreg- "ularly, as *ex gr.* in virtue of a popular vote ordered "by a 'county court,' instead of one ordered by the 'board "of supervisors;' the vote, however, and other proceed- "ings having been in all respects other than the source "of the order, regular."

That in the case of *Pendleton County v. Amy*, the authority to subscribe to the stock of the company was given on condition that the county would so vote by a majority of the real-estate holders residing therein. The county received in exchange for the bonds a certificate for the stock of the railway company, which it held about seventeen years before the suit was brought, and which it owned at the time of the commencement of the action. It did not appear that the bonds contained any recitals that conditions precedent had been complied with, or that the county had subsequently levied taxes to pay interest on the bonds. The county set up as a defense, that there was no power to issue the bonds, because no vote of the people had ever been taken. The plaintiff being a *bona fide* holder, it was held, that he was entitled to recover, and that the county was estopped to set up that no vote was had.

The ground of the estoppel is thus stated by Mr. Justice STRONG:

"The county received in exchange for the bonds a certificate of the stock of the railroad company, which it held about seventeen years before the present suit was brought, and which it still holds. Having exchanged the bonds for the stock, we think the county cannot retain the proceeds of the exchange, and assert against a purchaser of the bonds for value, that though the legislature empowered it to make them, and put them on the market, upon certain conditions, they were issued in disregard of the conditions."

In the above case it will be observed that if the court had been of opinion that the bonds were enforceable in the hands of a holder for value though *no* election had in fact ever been held, the case would naturally have been put upon that ground.

In the case of the *City of Lexington v. Butler*, the city was held liable upon bonds issued to a railway company under the following circumstances, viz.: The legislature authorized the city to subscribe on the condition of a majority vote; the city embodied three conditions in the proposition submitted to the voters, one of which was that $1,000,000 should be subscribed by other parties; the vote carried; other parties did not subscribe the $1,000,000; the city refused to subscribe and issue bonds, but was compelled to do so by a *mandamus* of an inferior court, whose judgment was afterwards reversed by the Court of Appeals of the State, which held that the city had no authority to take the stock or issue the bonds until the $1,000,000 had been subscribed by the other parties. Meanwhile, however, the bonds were issued by the city, bearing its seal and signed by its mayor and clerk, each bond containing on its face a certificate that it was issued in part

payment of the subscription of $150,000, by the city of Lexington, to the capital stock of the railroad company, by order of the mayor and council of said city, as authorized by a vote of the people taken in pursuance of the act of the General Assembly of the State (Kentucky).

The Supreme Court of the United States held that a *bona fide* holder for value of these bonds, who had no actual notice of the facts relied on for a defense, could recover thereon. Mr. Justice CLIFFORD, delivering the opinion of the court, makes use of this language in stating the ground of the judgment:

"Admitted, as it is, that the corporation defendants possessed the power to subscribe for the stock and issue the bonds, it is clear that the plaintiff is entitled to recover upon the merits, as the repeated decisions of this court have established the rule that when a corporation has power under any circumstances to issue negotiable securities, the *bona fide* holder has a right to presume that they were issued under the circumstances which give the requisite authority, and that they are no more liable to be impeached in the hands of such a holder than any other commercial paper."

The substance of the decision in this case would seem to be that a *bona fide* purchaser of the bonds had a right to presume that the condition annexed by the city as to the $1,000,000 of other subscriptions had been complied with, and thus viewed the judgment of the court rests upon grounds whose soundness cannot admit of question. It is not an authority upon its essential facts in favor of the proposition that if the bonds had been issued without any vote, or attempt at a vote, they would have been binding in the absence of estoppel other than by recitals or other ground of liability.

In *Grand Chute v. Winegar*, former decisions on the

point were referred to and approved by the court, and the law again stated to be that, "in a suit against a "municipal corporation by a *bona fide* holder of its "bonds, whose title accrued before maturity, the cor- "poration cannot show by way of defense, if the legal "authority of the corporation to issue the bonds is suf- "ficiently comprehensive, a want of compliance on its "part with formalities required by the statute authoriz- "ing the issue of the bonds, or show fraud in their "own agents in issuing them."

In the case of *St. Joseph Township v. Rogers*, it was held that, "under a statute of Illinois, authorizing any "township along the route of a railroad named, to sub- "scribe to its stock, subject to certain conditions set forth "in the statute, it being made the duty of the super- "visor who executed the bonds to determine the question "whether an election was held, and whether a majority "of the votes cast were in favor of the subscription, and "inasmuch as he had passed upon the question and sub- "scribed for the stock and subsequently executed and "delivered the bonds, it was clearly too late to question "their validity where they were in the hands of an in- "nocent holder."

In this case, however, in favor of a *bona fide* holder for value of the bonds, it was held that a certain act passed for that purpose, had "entirely obviated all the mistakes and irregularities in the prior proceedings" in the matter of the election held *prior* to the passage of the act under which the bonds were executed.

And, moreover, each bond recited that it was issued by virtue of a law of the State of Illinois, entitled "'An act to amend the articles of association of the

"Danville, Urbana, Bloomington, and Pekin Railroad "Company, and to extend the powers of and confer a "charter upon the same,' approved February 28th, 1867, "and in accordance with the vote of the electors of "said township at the special election held August "14th, 1866, in accordance with said act."

The *general result* of the decisions of the Supreme Court of the United States upon municipal railway-aid securities, is, in this case, very clearly summarized by Mr. Justice CLIFFORD, who delivered the opinion of the court:

"Bonds, payable to bearer, issued by a municipal corporation to aid in the construction of a railroad, if issued in pursuance of a power conferred by the legislature, *are valid commercial instruments;* but if issued by such a corporation which possessed *no power* from the legislature to grant such aid, they are invalid, even in the hands of innocent holders. Such a power is frequently conferred *to be exercised in a special manner*, or subject to certain regulations, conditions, or qualifications, but if it appears that the bonds issued show by their *recitals* that the power was exercised in the manner required by the legislature, and that the bonds were issued in conformity with those regulations and pursuant to those conditions and qualifications, proof that any, or all, of those recitals are incorrect will not constitute a defense to the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulation, condition, or qualification which it is alleged was not fulfilled."

In the case of *Knox County v. Aspinwall*, in which it was announced as a general principle that "*where bonds, "on their face, import a compliance with the law under "which they were issued, the purchaser is not bound to "look further for evidence of a compliance with the condi-"tions to the grant of the power,*" it appears that each bond specifically recited an authorized, lawful purpose

for which the same was executed — namely, "in part "payment of a subscription of $200,000, by the said "Knox County, to the capital stock of the Ohio and "Mississippi Railroad Company;" and each bond, also, recited that it was issued "by order of the board of "commissioners in pursuance of the third section of the "act, &c., passed by the General Assembly of the State "of Indiana, and approved 15th January, 1849."

Is it meant by the above rule that where the power to issue bonds is given upon the condition of a previous majority vote in favor of the proposition duly submitted, the public or municipal officers can, where *no vote has been taken or the proposition has been voted down*, bind the county by the issue of bonds and false recitals therein?

Would those bonds have bound the county of Knox, if in fact no previous majority vote had been had in their favor, and the recital therein appearing had been false in each and every particular?

If, in the present case, it should be adjudged that there was no power or authority to issue the bonds in aid of a "steam custom grist-mill," does the above rule render the same valid in the hands of a holder thereof for value before maturity, who has no notice of the *purpose* for which they were made, other than as shown by the face of the bonds?

When the *facts* of the case of *Knox County v. Aspinwall*, and the *facts* of each of the cases cited in which the foregoing rule has been reaffirmed and applied, are carefully considered, it clearly appears, we think, that each and all of those cases had every prerequisite necessary to sustain the bonds, and that none of them required, in its decision, the application of this rule to

its full extent. The broad language used in the statement of the principle in the *Knox County* case, and in some other decisions of the Supreme Court, appears to be narrowed and qualified by the facts of the cases in which it has been applied.

The qualified concurring opinion of Mr. Justice BRADLEY in *The Town of Coloma v. Evans*, seems to be here pertinent:

"I dissent from the opinion of the court in this case, so far as it may be construed to reaffirm the first point asserted in the case of *Knox County v. Aspinwall*, to wit: that the mere execution of a bond by officers charged with the duty of ascertaining whether a condition precedent has been performed, is conclusive proof of its performance. If, when the law requires a vote of tax-payers, before bonds can be issued, the supervisor of a township, or the judge of probate of a county, or other officer or magistrate, is the officer designated to ascertain whether such vote has been given, then, the *bona fide* purchaser of the bonds need go back no further. He has a right to rely on the statement as a determination of the question. But a mere execution and issue of the bonds without such recital, is not, in my judgment, conclusive. It may be *prima facie* sufficient; but the contrary may be shown. This seems to me to be the true distinction to be taken on this subject, and I do not think that the contrary has ever been decided by this court. There have been various *dicta* to the contrary, but the cases, when carefully examined, will be found to have had all the prerequisites necessary to sustain the bonds, according to my view of the case. This view was distinctly announced by this court in the case of *Lynde v. The County of Winnebago*, 16 Wall., 13. In the case now under consideration, there is a sufficient recital in the bond to show that the proper election was held and the proper vote given; and the bond was executed by the officers whose duty it was to ascertain the facts. On this ground, and this alone, I concur in the judgment of the court."

Upon the doctrine of estoppel as stated in the foregoing cases, in Dillon on Municipal Corporations, section 418, the author says:

"Notwithstanding the broad language in some of the opinions to the effect that where the *power* exists under any circumstances in the corporation to issue negotiable securities, the *bona fide* holder has the right to presume that they were duly issued, yet when the *facts* of the cases are considered in which such language is used, we are unable, after a careful review of the decisions of the Supreme Court, to say that they lay down the doctrine that *merely* by recital in the bonds, the corporation will, under all circumstances, in favor of an innocent holder, be estopped from showing that in point of fact no election whatever was holden, or that any other condition precedent to the exercise of the power has not been complied with. If upon a true construction of the legislative enactment, conferring the authority, the corporation or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has been complied with, then it may well be that their recital of their determination of a matter *in pais* which they are authorized to decide, will, in favor of the bond-holder for value, bind the corporation; and to this extent, and no further, as it seems to us, have the decisions of the Supreme Court gone, when critically viewed, upon the point of estoppel by *mere recital.*"

The case under consideration is to be distinguished from all the cases cited, in certain important respects, as follows:

(*a.*) The *purpose* for which the bonds were in point of fact voted and issued:

(*b.*) The *recital:*

(*c.*) The *records* required by the statute under which these bonds purport to have been issued.

It is to be noticed that in all the cases cited and examined as above, the bonds were voted and issued, confessedly, for a public purpose, — all of them, except in the case of *Grand Chute v. Winegar,* being issued

to aid in the construction of railroads; and that in most, if not all, instances, the object for which they were made, was truthfully and unequivocally stated on their face, but if not so stated, then that it was not a matter of dispute between the parties. The controversy in each case was not so much in regard to the *power* of the municipal corporations to issue the bonds, as in regard to an alleged non-compliance with the conditions precedent to the exercise of the power. These conditions precedent coupled with the grant of power, being composed of matters of fact, or rather, becoming such when once complied with, it appears that whether or not the conditions have been complied with, before the exercise of the power, becomes, mainly, a determination of questions of fact. In none of the foregoing cases were the officers who executed the bonds called upon to decide as a *question of law*, whether the work to be aided by bonds, was, or was not, for a public purpose; but on the contrary, in the present case the officers who executed the bonds were called upon to decide, not only questions of fact, but also, a question of law, to wit — whether the mill for which the bonds were voted, is a work of internal improvement within the meaning of the act in pursuance of which the bonds purport to have been made. The trustee, clerk and treasurer of Burlington Township adjudged said mill to be a work of internal improvement within the meaning of the statute. Does the declaration of their decision of this question of law as recited in the bonds conclude the township against denying its correctness?

It seems that the doctrine of estoppel by mere recital as heretofore applied, has been confined to the decision

of questions of fact, things *in pais*, which the officers making the decision were authorized to determine finally.

The *recital* in these bonds is as follows, to wit:

"This bond is one of an issue of eight thousand dollars, made for the purpose of aiding internal improvements in said township, and in pursuance of an act of the Legislature of the State of Kansas, entitled 'An act to authorize counties, 'incorporated cities, and municipal townships to issue bonds 'for the purpose of building bridges, aiding in the construc-'tion of railroads, water-power, or other works of internal 'improvement, and providing for the registration of such 'bonds, the registration of other bonds, and the repealing of 'all laws in conflict therewith,' approved March 2d, 1872."

In this recital no authorized, lawful purpose for which the bonds were made is specifically stated. For aught that appears therein, they may have been made for the purpose of building a bridge, aiding in the construction of a railroad, water-power, or some other work of "internal improvement." Nor is it declared that they were ordered by a vote of the qualified electors of Burlington Township. These bonds, instead of reciting the *fact* that they are made for the purpose of aiding John S. Stow of said township in the construction and completion and to furnish the motive power of his steam custom grist-mill, recite instead thereof, a *matter of law*, a legal conclusion, to wit, that they are "made for "the purpose of aiding internal improvements in said "township;" and, also, the further legal conclusion drawn from facts not appearing on the face of the bonds that they are made in pursuance of a certain act of the Legislature of the State of Kansas, entitled as above stated. Only one fact is recited in the recital, to wit — "This bond is one of an issue of eight thou-"sand dollars." Indeed, the general character of the

recital is such as to invite inquiry and make it obligatory upon him who would become a purchaser of these securities, to carefully examine the various provisions of the act under which they import to have been made, and to be guided thereby in ascertaining whether or not the conditions precedent to the exercise of the power by the officers of the township, had been, in all respects, substantially followed. He should seek outside of this vague and barren recital for the specific object for which these instruments were issued.

In support of the view that the holder of these instruments was bound to look further than their face and ascertain the precise purpose for which they were issued, is a sound principle stated by Mr. Justice MILLER in *Thayer v. Montgomery County* (3 Dillon's Cir. Ct. Rep., 390), as follows:

"An authorized, lawful purpose for which the bonds are issued should be alleged in the declaration or be recited in the bonds, which are made part thereof. This, I think, is a sound proposition. The power of counties to issue bonds is not inherent or general. They are authorized to issue bonds or negotiable paper, only for limited or specific objects or purposes, and hence it should appear by averment in the petition or by recital in the bonds that they were issued for one of these specified purposes."

See, also, *note* to the above case, as follows:

"The opinion of Mr. Justice MILLER in the above case, asserts a doctrine of general interest, and holds that there is no presumption in favor of the power to issue such securities, and that to constitute a good declaration it must appear on the face thereof, or by recital in the bonds made part thereof, that the bonds were issued for some authorized purpose or object. The importance of this principle is manifest, for if bonds issued by counties contain no recital, it would seem to follow that there would be no presumption in favor of their validity, and it would devolve upon the holder, though he were such *bona fide*, and for value, to aver and show by evidence *aliunde*, that the bonds were issued for some pur-

pose authorized by statute. This view has much to support it in one of the latest cases on the subject in the Supreme Court of the United States. (*Mayor v. Ray*, 19 Wall., 468.)"

In the title of the act under which these bonds seem to have been made, the use of the expression "water "power," signifying the power of water, employed, or capable of being employed, to move machinery, is, of itself, sufficient to put the purchaser upon inquiry to ascertain definitely for what purpose these instruments were made. A prudent, practical and sagacious man who has money to invest in municipal bonds, may be presumed to know, as a matter of fact, that the power of water used to move machinery is generally used for manufacturing purposes, and that such power is commonly owned and controlled by private persons, companies or corporations, rather for their own private profit, than for the public benefit. Such a man about to buy these bonds should inquire whether they were not in truth made to aid a private manufacturing enterprise; and if so, whether, as a matter of law, the above act does, or even can, authorize and empower a municipal township to become a holder of stock in a water-power, and execute in payment therefor, its bonds which, along with the interest thereon, are to be paid for and redeemed by the tax-payers of the township.

Next after the words "water-power" in the title of the statute are the words, "or other works of internal improvement" — which general words are restricted in meaning to objects of the like kind with those before specified. Bridges and railroads being works of internal improvement within the meaning of the act, if a water-power should be adjudged to be not such a work,

then it seems that under cover of the general words qualifying the particular objects mentioned, may lie latent works, not only of a public, but also, of a private character.

It is submitted that this statute is partly valid and partly invalid; — that it is valid so far as it authorizes counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, and aiding in the construction of railroads, or any other work which is essentially for a public purpose; but that it is invalid for the purpose of aiding in the construction of a water-power or any other work not strictly for a public object.

If this be a correct view of the statute — there being no presumption that the bonds in question were executed under the valid part of the act — the purchaser was bound to look further for evidence of a compliance with the conditions annexed to the grant of the power to issue them.

That this recital is unauthorized seems hardly to be doubted. There is nothing in the statute requiring it. In case a county, city, or township would issue bonds under this act, the election provided for is to be in all respects governed, and the result declared according to the rules and regulations provided by law for holding elections in such county, city, or township; and the records required to be kept under the general election law in force at the time of such election — and not the recital in the bonds — appear, in the present instance at least, to be the proper evidence of the fact that an election was held and a vote taken upon a proposition which authorized the issue of the bonds. Had the statute required this or any other recital, and declared

it evidence of the facts recited and of the correctness of the legal conclusions stated therein, there would be more force in the view that the holder of the bonds was not bound to look further for evidence of their validity.

Concerning the *records* required to be kept under the statute, sections 12, 13 and 14 of which are as follows:

"SEC. 12. The officers of any county, city or township issuing such bonds shall make registration thereof *in a book to be kept for that purpose*, showing the date, amount, number, maturity, and rate of interest of such bonds, and if issued for the building of a bridge, *what bridge;* or, if to aid in the construction of a railroad or other work of internal improvement, *of what railroad or other work of internal improvement*, and whether the same be a donation or for stock therein, and shall at the time of the issuing of the same, make out and transmit to the Auditor of State a certified statement of the number, amount, and *character of the bonds* so issued, to whom issued, and FOR WHAT PURPOSE, which statement shall be attested by the clerk of the county, city or township issuing the same, together with the corporate seal of such county, city or township, if any such there be.

"SEC. 13. It shall be the duty of the clerk of each county, city or township in this State, within sixty days from the taking effect of this act, and thereafter on the first day of January and July of each year, and at such other times as the Auditor of State may request, to make out, certify and transmit to the Auditor of State a full and complete statement of the bonded indebtedness of every description of such county, city and township at the date of such statement, *particularly setting forth the nature of such bonds*, and *for what purpose the same were issued*. Then the Auditor of State, upon the receipt of any such statement, shall, *in a book, to be by him kept for that purpose*, make a faithful record of the bonded indebtedness of the several counties, cities and townships in this State, and shall note therein all bonds subsequently issued, paid or cancelled as the same may be reported to him as aforesaid.

"SEC. 14. Within thirty days after the delivery of such bonds, the holder thereof shall present the same to the Auditor of State for registration, and the Auditor shall, upon being satisfied that such bonds have been issued according to the provisions of this act, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, *in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same*, and shall, under his seal of office, certify upon such bonds the fact that they

have been regularly and legally issued; that the signatures thereto are genuine; and that such bonds have been registered in his office according to law: for which registration and certificate, the Auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof."

To these sections of the statute may well be applied the language of DIXON, Chief Justice, in delivering the opinion of the court in the case of *Veeder v. The Town of Lima* (19 Wis., 305, 306):

"These provisions mark very clearly to my mind the intention of the Legislature that all persons negotiating for the bonds, whether directly with the supervisors [township officers] or with third parties, must look to the records and govern themselves accordingly. They are public records, open at all times to inspection; or if in any case this is inconvenient or impracticable, transcripts can be procured at a very trifling expense. They are the evidences of the transactions of the town, kept and preserved as well for the benefit and protection of the citizens as of the holders of the bonds. In some respects, and those obviously most for the interest of the holders of the bonds, they are conclusive evidence.

* * * * * * * *

The importance attached to the records, the particularity with which they are required to be kept, the fact that they are public, and regulated and prescribed by the act authorizing the subscription, as a part of the means by which the power given is to be carried into execution—all go to establish the purpose of the legislature, which was, that they should be public, official notice of everything contained in them, and that if they are deficient or wholly wanting, persons dealing with the agents of the town [township]—for the supervisors [township officers] are nothing but agents acting under a special authority—should be on their guard, and see that they do not exceed their powers."

If it should be adjudged that there was no power or authority to issue the bonds in question, it is submitted that since they do not on their face particularize any authorized, lawful purpose for which they were issued, or show, as a matter of fact, for what work

of internal improvement they were made to aid, and inasmuch as there seems to be no presumption in favor of the power of a municipal township to issue such securities, the holder thereof was bound to look outside of the bonds themselves for evidence of a compliance with the conditions annexed to the grant of the power—that he was bound to take notice of the records required to be kept concerning the bonds, and ascertain therefrom whether or not they were executed for a valid purpose; in short, that if these bonds were issued in aid of a strictly private enterprise, then that the recital therein is of such a nature as not to render them valid in the hands of a holder thereof for value before maturity, who has no notice of the purpose for which the same were issued, other than as shown by the face of the bonds.

THE BOND REGISTRATION LAW.

But it is insisted that as the defendant in error became a *bona fide* holder of these bonds after the registration thereof by the Auditor of State, they came into his hands "purged of all infirmities, with all prior "equities cut off; or rather, with an *adjudication*, under "no circumstances to be impeached collaterally, that no "prior equities existed."

The first proviso of section 11 of the act in pursuance of which these bonds profess to have been made, is as follows:

"*Provided*, That such bonds shall not bear interest or be negotiable until after the delivery and registration thereof."

Along with this provision of the statute, are now to

be considered sections 14 and 15 thereof, which are as follows:

"SEC. 14. Within thirty days after the delivery of such bonds, the holder thereof shall present the same to the Auditor of State for registration, and the Auditor shall, upon being satisfied that such bonds have been issued according to the provisions of this act, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds the fact that they have been regularly and legally issued; that the signatures thereto are genuine; and that such bonds have been registered in his office according to law: for which registration and certificate, the Auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof.

"SEC. 15. That the holder of bonds heretofore issued, or that may hereafter be issued, in pursuance of any contract heretofore made, under any law of this State, may have the benefits of this act by having such bonds registered in the office of said Auditor of State, as provided herein, for the registration of bonds [issued] by virtue hereof. It shall be the duty of the Auditor of State, upon the registration of any bonds not issued under the provisions of this act, within ten days thereafter, to notify the officers issuing the same, of such registration, which fact shall be entered by such officers in a book wherein the record of such bonds is kept; and such bonds shall thereafter be considered registered bonds."

The Auditor's certificate on these bonds, which, it is claimed, creates an estoppel upon the township, is as follows:

I, D. W. WILDER, Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine; and that such a bond has been duly registered in my office, in accordance with an act of the Legislature, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, ———— or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872.

Witness my hand and official seal, this 20th day of January, 1873.

{Seal of the Auditor of State. Kansas.—Jan. 29, 1861.}

D. W. WILDER, *Auditor of State.*

Concerning bonds registered as provided for in section 15 above cited, Mr. Justice MILLER, in the case of *January v. Johnson County* (3 Dillon's Cir. Ct. Rep., 392), has decided as follows: "The act of the State "of Kansas of March 2, 1872, providing for the regis- "tration of municipal and county bonds, is not a curative "act in the sense that it takes away any valid defense "which the city or county would otherwise have to bonds "theretofore issued."

If invalid bonds issued before the above-named act took effect, be incurable, immedicable, incapable of being "purged of their infirmities" by registration as provided for in section 15 of the act, why should invalid bonds purporting to have been made in pursuance thereof, be rendered valid by mere registration as provided for in section 14 of this statute? Did the Legislature intend that, if, perchance, the Auditor's certificate should be indorsed upon an infirm bond, such certificate should be a sort of legal panacea — or rather, cataplasm — which would instantly cure every ailment therein?

The bonds themselves when presented for registration, the statute authorizing the issue of the same, and the certified statement which, under the requirements of section 12, the officers of the county, city or township issuing bonds, at the time of issuing the same, are required to make out and transmit to the Auditor of State — such statement being duly attested, and becoming a record in his office — afford the only evidence provided for by law from which the Auditor is to become satisfied that the signatures to the bonds are genuine and that the same have been regularly and legally issued before they are to be sanctioned by his certifi-

cate. Since no other and further evidence is by the statute provided for in the matter of the registration of bonds, it is hardly to be presumed that the Legislature designed that, so far at least as void bonds are concerned, the certificate of a merely ministerial officer should have the force and effect of a "final adjudication" in favor of the holder of such securities and against the county, city or township issuing the same. If the registration law was intended to endow this officer with judicial functions and transform him into a court of last resort, clothed with the power of summarily and finally deciding on meagre and *ex parte* evidence that bonds have been regularly and legally issued under this act, then surely the power bestowed is a most extraordinary one,—a power at once full, absolute, uncontrollable and unparalleled. Under such a power claimed for the Auditor of State, bonds to be issued upon the condition of a previous majority vote in favor of the proposition, but in fact executed where no vote has been taken or the proposition has been voted down, or bonds voted in aid of a strictly private enterprise, but with this fact undisclosed in the recital or the purpose falsely stated therein, might be validated by that officer's certificate and the law itself be oftentimes used to make fraudulent bonds marketable.

The officers of any county, city or township issuing bonds and making registration thereof, have, of course, a personal knowledge of each and every fact to be by them recorded; and thus they are placed in a better position, in some respects, to decide whether or not the bonds have been issued according to the provisions of this act, than the Auditor of State who has no knowledge of these facts except what he obtains from the

statement to be duly made out and transmitted to him by such officers. Nor does his decision as recited in his certificate appear to be of a higher nature, or to possess any more force, or to be of a more conclusive character than the decision made by the officers who executed the bonds and with whom he concurs in opinion. This certificate is but cumulative evidence that the bonds have been regularly and legally issued. The judgment rendered by the Auditor in favor of their validity rests substantially upon the same foundation as that of the officers who issued them.

If it should be determined that there was no power or authority to issue the bonds in controversy and that the township is not concluded by the recital therein, why ought the Auditor's erroneous adjudication thereon that they have been regularly and legally issued, alone to create an estoppel upon the township? Can the erroneous decision made by the trustee, clerk and treasurer of Burlington Township that these bonds were made for the purpose of aiding internal improvements in said township and in pursuance of the above-named act of the Legislature, be cured by being affirmed by the Auditor of State? The legal efficacy claimed for this officer's certificate, as well as for the general and indefinite recital contained in these bonds, looks like an estoppel by argument, or by mere matter of supposal, rather than an estoppel arising from any certain intent or purpose precisely and directly discoverable in the statute in pursuance of which these securities profess to have been made.

To claim that the Auditor's certificate is conclusive evidence that the bonds under consideration — the payment whereof with interest, is provided for solely by

taxation — were in point of fact regularly and legally issued, and that the holder thereof was not bound to look beyond them, is, we think, in effect to claim, among other things, that two well-settled propositions should be unsettled and overruled: first, that taxation, to be sustained, must be for a public purpose; and second, that where municipal bonds are issued, whose payment is provided for solely by taxation, their validity depends upon the question whether the purposes to which the proceeds of such bonds are to be applied, are public purposes.

A reasonable view of the registration law incorporated in chapter 68 of the Laws of Kansas, of 1872, appears to be that it is intended to increase the value of bonds by affording protection both to the *bona fide* bond-holders and the municipality issuing the bonds; but that said law is not designed to take away any valid defense which a county, city or township would otherwise have to bonds by it issued.

statement to be duly made out and transmitted to him by such officers. Nor does his decision as recited in his certificate appear to be of a higher nature, or to possess any more force, or to be of a more conclusive character than the decision made by the officers who executed the bonds and with whom he concurs in opinion. This certificate is but cumulative evidence that the bonds have been regularly and legally issued. The judgment rendered by the Auditor in favor of their validity rests substantially upon the same foundation as that of the officers who issued them.

If it should be determined that there was no power or authority to issue the bonds in controversy and that the township is not concluded by the recital therein, why ought the Auditor's erroneous adjudication thereon that they have been regularly and legally issued, alone to create an estoppel upon the township? Can the erroneous decision made by the trustee, clerk and treasurer of Burlington Township that these bonds were made for the purpose of aiding internal improvements in said township and in pursuance of the above-named act of the Legislature, be cured by being affirmed by the Auditor of State? The legal efficacy claimed for this officer's certificate, as well as for the general and indefinite recital contained in these bonds, looks like an estoppel by argument, or by mere matter of supposal, rather than an estoppel arising from any certain intent or purpose precisely and directly discoverable in the statute in pursuance of which these securities profess to have been made.

To claim that the Auditor's certificate is conclusive evidence that the bonds under consideration — the payment whereof with interest, is provided for solely by

taxation — were in point of fact regularly and legally issued, and that the holder thereof was not bound to look beyond them, is, we think, in effect to claim, among other things, that two well-settled propositions should be unsettled and overruled: first, that taxation, to be sustained, must be for a public purpose; and second, that where municipal bonds are issued, whose payment is provided for solely by taxation, their validity depends upon the question whether the purposes to which the proceeds of such bonds are to be applied, are public purposes.

A reasonable view of the registration law incorporated in chapter 68 of the Laws of Kansas, of 1872, appears to be that it is intended to increase the value of bonds by affording protection both to the *bona fide* bond-holders and the municipality issuing the bonds; but that said law is not designed to take away any valid defense which a county, city or township would otherwise have to bonds by it issued.

Wm. F. Randolph
Atty for Plff in Error.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1876.

THE TOWNSHIP OF BURLINGTON, IN THE COUNTY OF COFFEY, AND STATE OF KANSAS, *Plaintiff in Error,*

vs.

ALFRED W. BEASLEY, *Defendant in Error.*

ARGUMENT OF A. L. WILLIAMS,

Attorney for Defendant in Error.

GEO. W. MARTIN, KANSAS PUBLISHING HOUSE, TOPEKA.

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ARGUMENT OF A. L. WILLIAMS,

Attorney for Defendant in Error.

STATEMENT OF THE CASE.

This was a suit brought in the Circuit Court of the United States for the District of Kansas, at the June Term thereof, A. D. 1876, by Alfred W. Beasley against the Township of Burlington, in the County of Coffey, and State of Kansas, to recover the amount due upon sixty-four coupons, each for the sum of twenty-five dollars, together with interest thereon — the same being overdue. Of these coupons, as well as of the bonds to which they had been originally attached, the said Beasley averred himself to have become the true and lawful owner and holder for value before maturity, and also, to be such owner at the commencement of his suit as aforesaid.

The bonds to which these coupons had been attached

are a part of a certain series of sixteen bonds, each for the sum of $500, the whole amounting to the sum of eight thousand dollars, issued by said township December 3d, 1872, to aid one John S. Stow in the construction and completion and to furnish the motive power of a steam custom grist-mill in said township — the same belonging to the said Stow, and not being situated on a water-course, or operated by water-power.

A copy of one of said bonds is as follows, to wit:

$500. No. 1.

BOND OF BURLINGTON TOWNSHIP.

COUNTY OF COFFEY, STATE OF KANSAS.

UNITED STATES OF AMERICA.

BURLINGTON TOWNSHIP, in the County of Coffey, State of Kansas, promises to pay John S. Stow, or bearer, the sum of Five Hundred Dollars, on the third day of December, A. D. 1877, and interest thereon at the rate of ten per cent. per annum, payable semi-annually, upon presentation of the coupons therefor, hereto annexed: both principal and interest payable at the banking house of Northrup & Chick, in the city of New York.

This Bond is one of an issue of Eight Thousand Dollars, made for the purpose of aiding internal improvements in said township, and in pursuance of an act of the Legislature of the State of Kansas, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872.

In testimony whereof, the Township Trustee, Clerk and Treasurer have caused this bond to be issued, duly signed, attested and countersigned, this third day of December, A. D. 1872. H. R. FLOOK, *Trustee.*

Attest: G. N. MCCONNELL, *Clerk.*

Countersigned: H. L. JARBOE, *Treasurer.*

A copy of the above bond was attached to and made a part of said Beasley's petition.

The following is a copy of one of the coupons sued upon, to wit:

$25.00. No. 3.

The Treasurer of Burlington Township, Coffey County, Kansas, will pay to the bearer Twenty-five Dollars, at the banking house of Northrup & Chick, in the city of New York, on the third day of June, A. D. 1874, for six months' interest on Bond No. 1, issued on the third day of December, A. D. 1872.

Attest: G. N. McConnell, *Township Clerk.*
H. R. Flook, *Township Trustee.*

A copy of the certificate of registration, indorsed upon each of said bonds, is as follows, to wit:

I, D. W. Wilder, Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine; and that such bond has been duly registered in my office, in accordance with an act of the Legislature, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, ———— or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1872.

Witness my hand and official seal, this 20th day of January, 1873.

{Seal of the Auditor of State. Kansas.—Jan. 29, 1861.} D. W. Wilder, *Auditor of State.*

The township set up two defenses; the second defense — the only one to be considered here — being, in substance, that on the 6th day of August, A. D. 1872, in the said township of Burlington, a special election was then and there held for the purpose of submitting to the electors of said township the following proposition, to wit:

"Shall the township of Burlington issue to John S. Stow, of said township and county, the bonds of said township to the amount of eight thousand ($8,000) dollars, to aid the said John S. Stow in the construction and completion and to furnish the motive power of a custom grist-mill at the town of Burlington, under the conditions as follows: Said bonds are to be made payable in four equal installments of two thousand ($2,000) dollars each, in five, six, seven and eight years, respectively, with interest as shall be determined by the board of officers issuing the some. Upon the issue of said bonds as aforesaid, said John S. Stow shall execute to said township his promissory notes for like amounts, to run

the same time, bearing the same rate of interest, and secure the payment of said several notes by first mortgage on his said mill and grounds on which the same is situate. The proceeds of said bonds are to be used exclusively in the completion of said work of internal improvement, and in paying the outstanding debts and liabilities incurred upon the said work of internal improvement, so far as said mill and machinery and improvements have progressed."

That a majority of the qualified electors of said township, voting at said election, voted in favor of the issuance of said bonds for the purpose aforesaid, and subject to the conditions above set forth.

That on the 3d day of December, A. D. 1872, the officers of said township, assuming to act under and by virtue of the election held as aforesaid, and also, assuming to act in pursuance of the above-entitled act of the Legislature of the State of Kansas, approved March 2, 1872, executed and delivered to the said John S. Stow the bonds of said township to the amount of $8,000—the same being sixteen bonds, numbered from 1 to 16 inclusive, each bond bearing date the third day of December, A. D. 1872, and being for the sum of $500, due as follows: Bonds Nos. 1, 2, 3 and 4, due in five years from said date; Bonds Nos. 5, 6, 7 and 8, due in six years from said date; Bonds Nos. 9, 10, 11 and 12, due in seven years from said date; Bonds Nos. 13, 14, 15 and 16, due in eight years from said date;—each and all of said bonds bearing interest from date at the rate of ten per cent. per annum, payable semi-annually, and for which interest coupons were thereunto respectively attached: both principal and interest payable at the banking house of Northrup & Chick, in the city of New York.

That for and in consideration of said bonds, the

above-named John S. Stow executed and delivered to said township his four certain promissory notes, each for $2,000, in accordance with the terms of the aforesaid proposition; and, to secure the payment of said note, with interest, executed a mortgage upon his said mill and the grounds upon which said mill is situate.

The said bonds were issued to aid a STEAM CUSTOM GRIST-MILL, not situated on a water-course or operated by water power.

That each and all of the bonds mentioned and described in plaintiff's petition are a part of the said series of sixteen bonds of said township, made and issued as aforesaid.

That each and all of the coupons mentioned and described in said petition, and constituting the several causes of action therein stated, are a part of the coupons for interest originally attached to the bonds made and delivered to John S. Stow as aforesaid.

That on the 31st day of May, A. D. 1875, in the District Court in and for said County of Coffey and State of Kansas, in a certain action wherein the said John S. Stow was plaintiff and the said Township of Burlington was defendant, said action having been brought by said plaintiff to obtain an order and decree for the delivery up to him of the aforementioned promissory notes, and for the cancellation of said mortgage on the records of said county, on the trial of said cause the court found that said notes and mortgage were given by said John S. Stow to said township without any consideration whatever, and that the same are null and void; that the court ordered and adjudged that said notes be delivered up to said plaintiff, and that the mortgage deed given to secure their payment be cancelled on the records of said county, which said order and

judgment were thereafter by said township duly complied with; and that for and on account of said series of bonds, together with the coupons for interest thereto attached as aforesaid, the said Township of Burlington has received no valuable consideration whatsoever.

To this second defense in defendant's answer, the plaintiff Beasley demurred, and for cause of demurrer said: that the said count does not state facts sufficient to constitute a defense to the plaintiff's causes of action.

On the hearing of the said demurrer, three points or questions arose, on all of which the judges were divided in opinion; these questions — the only ones before this court — being as follows, to wit:

"*First:* Does the second count of the defendant's answer set up a sufficient defense to the action?

"*Second:* Said bonds having been issued to aid a steam custom grist-mill, not situated on a water-course or operated by water power, was there any power or authority to issue the same?

"*Third:* If there was no such power or authority, are the bonds containing the recital therein appearing, valid in the hands of a holder thereof for value before maturity, who has no notice of the purpose for which the same were issued, other than as shown by the face of the bonds?"

ARGUMENT.

I have adopted the statement of the case made by plaintiff in error. From that statement there arise the three questions upon which the court below divided in opinion.

The first question is really a part of the second, consequently they will be treated as one.

"*First:* Does the second count of the defendant's answer set up a sufficient defense to the action?

"*Second:* Said bonds having been issued to aid a steam custom grist mill, not situated on a water-course or operated by water power, was there any authority to issue the same?"

It is not claimed by the defendant in error, that any statute of Kansas authorized the issue of bonds to aid a steam mill or that such a statute, if passed, would be constitutional. On the contrary, it is conceded that no such law exists or could constitutionally exist, and if this were a question as to the power of the Legislature to authorize taxation in aid of a private enterprise it would not be presented to this court.

It is further conceded, that a steam mill is a private enterprise; that it cannot be aided by taxation, and if the bonds in suit revealed on their face the fact that they were issued to aid such an enterprise, they would be void, and this suit would not have been brought.

Underlying all this, however, is the question involved in the third point upon which the court divided:

"*Third:* If there was no such power or authority, are the bonds, containing the recital therein appearing, valid in the hands of a holder thereof for value before maturity, who has no notice of the purpose for which the same were issued, other than as shown by the face of the bonds?"

These bonds, it will be noted, were issued under a confessedly constitutional law which authorized the issue of just such bonds. (Chapter 68, Laws of 1872.)

The first section of that law is as follows:

"SECTION 1. That the board of county commissioners of any county, the mayor and common council of any incorporated city, and the trustee, clerk, and treasurer of any municipal township, in this State, are hereby empowered to issue the bonds of such county, city, or township, in any sum necessary, not greater than ten per cent., inclusive of all other bonded indebtedness, of the taxable property of such county, city, or township, for the purpose of building bridges, free or otherwise, or to aid in the construction of railroads or water power by donation thereto, or the taking of stock thereon, or for other works of internal improvement."

Here, then, is express power constitutionally conferred to aid "works of internal improvement." Works of

internal improvement mean public works. Whether the definition given by Congress in the act of 1841, granting lands to the States to aid in works of public improvement, is considered, or whether resort be had to subsequent legislation of the States, or judicial construction by the courts, the result is the same: "Internal "improvements are such public improvements as will "justify taxation in their aid."

In a case like this, who shall determine whether a given work is public or private? — the authorities which issue the bonds, or the courts? The law, it will be observed, is general, and authorizes aid to *any* work of internal improvement, leaving *somewhere* the right to determine whether a given enterprise is a work of internal improvement or not. In what tribunal is that right vested? In case the bond is silent as to the purposes for which the proceeds are to be used, and contains a recital that it is issued for works of internal (*i. e.*, public) improvements, and in pursuance of a law, authorizing the issue of such a bond, then the determination of the municipal authorities is final, and the holder need make no farther inquiry. If the bond, however, in addition to saying that the bond is issued for internal improvements, proceeds to show what the purpose is, the declaration is not necessarily final, and the courts may interpose and declare that the purpose is not public, and hold the bonds void. Thus, if the bond recited that it was issued "to aid works of in- "ternal improvement, to wit, to aid John Smith in the "erection of a hotel, at the town of Podunk," the courts would very properly say: "This recital is merely the "expressed judgment of the officers of a municipality "that a hotel is a work of internal improvement. It

"does not conclude any one. The purpose being shown, "the declaration that it is public is mere surplusage, and "it is for us to determine the character of the purpose."

The bonds in this case recite a public purpose, and a due compliance with the law. It is admitted that the bonds are regular and valid on their face, that these identical bonds would have been valid if the proceeds had been used, in fact, for a work of public improvement, such, for instance, as the improvement of a public street. It is strange indeed, that a bond, valid on its face, issued by the proper authority, and authorized by law, should depend upon a question of fact, outside of the bond, for its construction or validity. I can readily see how facts outside of a bond may be used as a defense, in certain cases, to the bond; but how a question of fact can affect the character of such a bond I cannot see. One set of facts being established, the bond will be *construed* to read that it promises to pay so much; another set of facts being shown, the bond will read that the maker promises *not* to pay. Such a rule will not work. The bond must be *construed* by reference solely to it and the law under which it was issued. Extrinsic facts cannot be resorted to to aid the construction.

The purpose shown on the face of the bond, then, must determine its character, and not the purpose which extrinsic facts may establish. Particularly is this so in the case of innocent holders. If the holder were held to inquiries as to facts outside of, and beyond, the bond itself, for the purpose of ascertaining whether the bond had been, in fact, issued for a public or a private purpose, his researches might be interminable, and still lead to no certain conclusion. For instance, aid to railroads

is authorized by the law under which the bonds in question were issued. Public railroads of course are meant. If they were not public, no aid by taxation could be extended to them. Now, suppose bonds are issued to aid in the construction of the Topeka and Carbondale railroad, and recite that fact, and that they were issued in pursuance of law: still, the purchaser —under the views of counsel for plaintiff in error— would be compelled to look back of the bonds to see if the law has been complied with. He does so. He examines the records, sees that the petition, notice of election, election, and terms of the donation are regular. Thereupon he buys the bonds. Suit being brought, it is claimed that the *character* of the bonds is changed, and they are invalid by reason of the *fact* that the railroad is purely a private road, for the sole convenience of the owner, built upon ground obtained by purchase—not condemnation, carrying neither freight nor passengers, but run exclusively for the purpose of carrying coal from the owner's mine at Carbondale to the owner's mill at Topeka. Can the corporation, issuing such a bond with such a recital, go behind it, and set up such a state of facts to defeat it in the hands of an innocent holder, without notice? Certainly not, if the long and unbroken list of similar cases, decided by this court heretofore, has any force in this case.

ESTOPPEL.

Judge DILLON, in an article in *The Southern Law Review*, after examining all the cases in this court on the subject of municipal bonds, thus summarizes the principles to be deduced:

"The purchaser is bound to see that there exists legislative authority not in conflict with the State constitution

for the issue of the bonds or commercial securities of the municipal, public or *quasi* corporation, and is bound to notice the contents and recitals contained in the instruments: but if such bonds are duly executed by the proper officer, and if these officers are invested, by the true construction of the legislative enactment in that regard, with the power to decide whether conditions precedent have been performed, and the bonds contain a recital that such conditions have been complied with, or a recital which implies such compliance, whether the preliminary conditions consist of facts *in pais* or facts of record — the issue of the bonds, under such circumstances, with such a recital, is conclusive against the municipality as to the fact or facts recited or implied in the recital, and estops it, in an action by an innocent holder for value, before due, to show the contrary."

And in accordance with these views the learned judge gave judgment in this case.

And it may also be added as the settled law of this court, that such securities are valid in innocent hands, *although in* POINT OF FACT *issued for a purpose not authorized by law.*

This will, I think, be apparent from an examination of a few of the cases.

This logical result of the admitted negotiability of this class of securities has been consistently followed by this court, as numerous decisions show. And as often as the position has been assailed this court has reaffirmed it — each succeeding decision reasserting the doctrine with added emphasis. So that the law may now be safely asserted to be: *that if a lawful authority exists to issue bonds, and they are issued, executed by the proper officers, with a recital that all the conditions of the law have been complied with,* NO *defense seeking to impeach their validity can be interposed against the innocent holder for value, without notice, unless the invalidity is apparent upon the face of the bonds, or can be made to appear from an examination of the law authorizing their issue.* In

other words, in such a case the municipality issuing such bonds would be estopped by the recitals in the bonds from showing any fact outside of the bonds themselves, and the law under which they were issued, as a defense to their validity.

This may be stating the doctrine broadly, but it is, it seems to us, the necessary logical result of the law as frequently laid down by this court.

Knox County vs. Aspinwall is the leading case on this subject. In that case Knox county was authorized to take stock in a railroad, paying therefor in bonds, "*provided a majority of the qualified voters of said county, "at any annual election, shall vote for the same.*" The defense was, that no proposition had carried by a vote of a majority of the qualified voters of the county, held in the manner prescribed by the law. It was conceded by the court that the vote was not had in conformity with the law, and that the authority for the issuance would be wanting were it not for an underlying question, viz., Who should determine whether the election had been properly held? The court held that from the very nature of the case that duty devolved upon the Board; that to issue the bonds without first having ascertained this fact was a clear violation of duty; and that, having issued the bonds with a recital therein contained of having complied with the law, it was too late, even in a direct proceeding, to assert the want of authority to issue against a *bona fide* holder of the bonds. The recital in the bonds amounted to an *estoppel in pais*. The court say:

"Another answer to this ground of defense is, that the purchaser of the bonds had a right to assume that the vote of the county, which was made a condition to the grant of

power, had been obtained, from the fact of the subscription, by the Board, to the stock of the railroad company, and the issuing of the bonds.

"The bonds on their face import a compliance with the law under which they were issued.

"'This bond,' we quote, 'is issued in part payment of a subscription of two hundred thousand dollars, by the said Knox county, to the capital stock, &c., by order of the Board of Commissioners, in pursuance of the third section of an act, &c., passed by the General Assembly of the State of Indiana, and approved 15th January, 1849.' The purchaser was not bound to look further for evidence of a compliance with the conditions of a grant of power."

So in *Royal British Bank vs. Tarquand* it was said —and approved by this court upon several occasions:

"We may now take it for granted that the dealings with these companies (corporations) are not like dealing with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which, on the face of the document, appeared to be legitimately done."

And this doctrine, though applied to a private corporation, is held by this court to be applicable to municipal corporations.

In *Bissell vs. Jeffersonville*, 24 Howard, p. 287, the same doctrine is held, and *Knox vs. Aspinwall* cited and approved.

The defense in the Jeffersonville case was the failure to present to the city council a petition signed by three-fourths of the legal voters, asking that a certain subscription to a railroad be made, and the question was, Had the defendants the right to prove that fact by parol testimony? It was stated by the court that, "unless three-fourths of the legal "voters had petitioned, it is clear that the bonds were issued "without authority." But it was further held that the

determination of that question was left to the common council, the tribunal to which the petition was addressed; that by issuing the bonds they had determined in favor of the sufficiency of the petition, and that it was too late to raise that question against *bona fide* holders of the bonds.

In the case of *Moran vs. Miami County*, 2 Black., 722, the case of *Knox vs. Aspinwall* is again approved, and language used which admits of no misconstruction. And it is precisely in point in our case. The court say:

"In our leading case upon the subject, that of the *Commissioners of Knox County vs. Aspinwall et al.*, the suit having been brought for the interest due upon coupons annexed to one hundred and forty-two bonds, in which the main ground of defense was, that a board of commissioners had not power to execute them, and that on such account they were not binding upon the county of Knox, our answer and judgment was, that the bonds on their face import a compliance with the law under which they were issued; and that the purchasers of them were not bound to look further for evidence of a compliance with the conditions annexed to the grant of power to issue them."

After quoting at some length, and approving the case of *British Bank vs. Tarquand*, the court further say:

"But the real point in this case, as made by the counsel of the plaintiff in error, and sustained in argument by numerous adjudicated cases, was, that as it is declared in the bonds that they were issued by the Board of Commissioners of Miami county by order or resolution, pursuant to the statute authorizing the county to borrow money, passed at a regular meeting of the Board, to be used by the Peru and Indianapolis Railroad, payable to the company or bearer, for a loan to the county; that the *bona fide* holders, whether so by endorsement or delivery, had a right to infer that the bonds had been lawfully issued, by which the county of Miami is estopped in a suit for the recovery of the interest, from denying by pleas that its bonds had been issued to the Peru and Indianapolis Railroad for a loan of money to the county of Miami. We think and adjudge that the recitals in the bonds are conclusive, constituting an *estoppel in pais* upon the defendants in this suit."

It would be difficult to express a doctrine more forcibly, and we think it will be seen at a glance that it exactly decides the law of our case.

In *Gelpcke vs. City of Dubuque*, the court decide and refer to the Knox County case as also deciding that, "when a corporation has power, under any circumstan-"ces, to issue negotiable securities, the *bona fide* holder "has a right to presume they were issued under the "circumstances which gave the requisite authority, and "they are no more liable to be impeached for any in-"firmity in the hands of such a holder than any other "commercial paper."

And in *Mercer County vs. Hacket*, 1 Wall., 83, the court say:

"We have decided in the case of *Commissioners of Knox County v. Aspinwall*, that where the bonds on their face import a compliance with the law under which they were issued the purchaser is not bound to look further. The decision of the Board of Commissioners may not be conclusive in a direct proceeding to inquire into the facts before the rights and interests of other parties had attached; but *after* the authority has been executed, the stock subscribed, and the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question."

In *Rogers vs. Burlington*, 3 Wall., 654, the same doctrine is held.

In *Supervisors vs. Schenck*, 5 Wall., 772, the court again use the precise language last quoted, preceded by the words "the decision of this court is that when," &c. The court also say:

"Argument of the defendants proceeds upon the ground that if they can show that the order for the election emanated from the wrong source, the plaintiff, although an innocent holder for value, cannot recover; but it is clear that in a case like the present, where the power to issue the bonds was fully vested in the corporation, the proposition cannot be sustained.

On the contrary, it is settled law that a negotiable security of a corporation, which upon its face appears to have been duly issued by such corporation, and in conformity with the provisions of its charter, is valid in the hands of a *bona fide* holder thereof, without notice, although such security was in point of fact issued for a purpose, and at a place not authorized by the charter of the corporation."

In *City of Lexington v. Butler*, the court say:

"Holders of such instruments [municipal bonds] if the same are indorsed in blank or are payable to bearer, are as effectually shielded from the defense of prior equities between the original parties, if unknown to them at the time of the transfer, as the holders of any other class of negotiable instruments. Admitted, as it is, that the corporation defendants possessed the power to subscribe for the stock and to issue the bonds, it is plain that the plaintiff is entitled to recover upon the merits, as the repeated decisions of this court have established the rule that when a corporation has power under any circumstances to issue negotiable securities the *bona fide* holder has a right to presume that they were issued under the circumstances which gave the requisite authority, and that they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper."

In *Grand Chute vs. Winegar*—a case so peculiar in its hardship that relief would have probably been afforded if it could have been done without departing from the law so frequently laid down by this court—all the former decisions on the point were referred to, approved and followed, and the law again stated to be as held in *Meyer vs. The City of Muscatine*, "that if the legal au-"thority was sufficiently comprehensive, a *bona fide* holder "for value has a right to presume that all precedent "requirements have been complied with."

In *St. Joseph Township v. Rogers*, the court state, in stronger language than is used in the case itself, the force of the decision in *Knox County vs. Aspinwall*. The court say:

"*Knox County vs. Aspinwall:* Non-compliance with one of the conditions was clearly shown in that case, as the notices of the election as required by law had not been given in any form, but the decision was that the question as to the sufficiency of the notice and the ascertainment of the fact whether the majority of the votes had been cast in favor of the subscription, was necessarily left to the inquiry and judgment of the county board, as no other tribunal was provided for the purpose; and the court held that after the authority had been executed, the bonds issued, and they had passed into the hands of innocent holders, it was too late, even in a direct proceeding, to call the power in question, and that it was beyond all doubt too late to call the power in question to the prejudice of a *bona fide* holder of the bonds in a collateral way, which is attempted to be done in the case before the court."

In the course of the opinion, the case of the *Royal British Bank vs. Tarquand* is again referred to and approved. In the latter case it was held, this court say: "Want of authority to execute the bond, it was con-"ceded, would be an answer to the action, but it was "denied that a mere excess of authority by the directors "would have that effect, unless it appeared that the "plaintiff had knowledge of the fact."

In 11 Paige, 635, is a case in which the law on this subject in relation to private corporations is thus stated:

"A negotiable security of a corporation, which upon its face appears to have been duly issued by such corporation, and in conformity with the provisions of its charter, is valid in the hands of a *bona fide* holder thereof, without notice, although such security was in fact issued for a purpose and at a place not authorized by the charter of the corporation, and in violation of the laws of the State where it was actually issued."

This decision was cited and approved, held to apply as well to municipal as to private corporations, and the language above quoted embodied in the opinion of this court in the case of *Supervisors vs. Schenck.*

In *Coloma vs. Evans*, 3 Central Law Journal, p. 325, the court say:

"In the present case, the person or persons whose duty it was to determine whether the statutory requisites to a subscription and to an authorized issue of the bonds had been performed, were those whose duty it was also to issue the bonds in the event of such performance. The statute requires the supervisor or other executive officer not only to subscribe for the stock, but also, in conjunction with the clerk, to execute bonds to the railroad company in the name of the town for the amount of the subscription. The bonds were required to be signed by the supervisor or other executive officer, and to be attested by the clerk. They were so executed. The supervisor and the clerk signed them, and they were registered in the office of the Auditor of State, in accordance with an act requiring that precedent to their registration the supervisor must certify under oath to the Auditor that all the preliminary conditions to their issue required by law had been complied with. On each bond the Auditor certified the registry. It was only after this that they were issued. And the bonds themselves recite that they 'are issued under and by virtue of the act incorporating the railroad company,' approved March 24, 1869, 'and in accordance with the vote of the electors of said township of Coloma, at a regular election held July 28, 1869, in accordance with said law.' After all this it is not an open question as between the *bona fide* holder of the bonds and the township, whether all the prerequisites to their issue have been complied with. Apart from and beyond the reasonable presumption that the officers of the law, the township officers, discharged their duty, the matter has passed into judgment. The persons appointed to decide whether the necessary prerequisites to their issue had been completed have decided and certified their decision. They have declared the contingency to have happened, on the occurrence of which the authority to issue the bonds was complete. Their recitals are such a decision, and beyond those a *bona fide* purchaser is not bound to look for evidence of the existence of things *in pais*. He is bound to know the law conferring upon the municipality power to give the bonds on the happening of a contingency, but whether that has happened or not, is a question of fact, the decision of which is by the law confided to others, to those most competent to decide it, and which the purchaser is, in general, in no condition to decide for himself."

The same doctrine has been held in *Marcy vs. Oswego* and *Long vs. Humboldt*, and I certainly have a right to claim that they are conclusive in favor of the bonds in suit.

THE TOWNSHIP RECORDS.

If it were true that the purchaser is bound to look beyond the bonds to the records of the township to ascertain whether the bonds were voted and issued for a public purpose or not, such an examination, in this case, would not show that these bonds were issued for a private purpose.

The proposition submitted and voted on, as shown by the answer of the township, was to "aid in the con-"struction and completion and to furnish the *motive power* "*of a custom grist-mill* at the town of Burlington."

Now, a custom grist-mill may be either a steam or a water mill. While it is conceded that a steam mill is a private enterprise, it is true, both by legislative and judicial construction, that a water mill in Kansas is public, and may be aided by taxation. A brief review of the laws of Kansas, and the decisions of our courts in Kansas, will abundantly prove this.

Chapter 65, General Statutes of 1868, declares:

"SECTION 1. That all water, steam, wind, or other mills, whose owners or occupiers grind, or offer to grind, grain for toll or pay, are hereby declared public mills."

The other sections proceed to regulate mills, the rates to be charged, etc., and more effectually control mills than it was ever attempted in Kansas to control railroads. Chapter 66, General Statutes of Kansas, page 576, authorizes the taking of property for mill and mill-dam purposes by the exercise of the power of eminent domain.

The law under which the bonds in suit were issued authorizes aid to "water power."

This is the legislation of the State on the subject, and all of the laws above referred to were in force when these bonds were issued.

In 1871, the question as to the constitutionality of the mill-dam act was twice before the Supreme Court of Kansas, and in both cases the act was sustained by a unanimous court. (*Cross vs. Venard*, 7 Kas., 248; *Harding vs. Funk*, 7 Kas., 315.)

In the latter case, the question was elaborately argued by the court, and in the course of the opinion the following language was used by VALENTINE, J.:

"There is only one reason given why such an act is not in its nature and essence a law, and that reason is that such an act provides for taking private property for *private use*. We suppose that it will be admitted that, if the act does provide for taking private property for private uses *solely*, it is unconstitutional. On the other hand, we suppose it will be admitted, even by the plaintiff in error, that if the mill-dam act is authorized for a *public use* solely, that the act is constitutional. Now, if the mill is to be absolutely a private mill, the defendants in error would have no right to erect their dam, as the dam would in such a case be solely for a private use. The fact, however, is *that the mills provided for under our statute* (chapters 65 and 66, Gen. Stat., pp. 575 to 580) *are neither absolutely private mills, nor absolutely public mills, but they partake of the character of both. They might perhaps properly be called quasi public mills.*"

Previous to these decisions the Supreme Court had decided that bonds could constitutionally be donated to aid in the construction of railroads: *Leavenworth Co. vs. Miller*, 7 Kas., 479.

In that case the validity of legislation, authorizing the issue of such bonds, was sustained solely on the admitted fact, that a railroad could be aided by the power of

eminent domain. It was held, and correctly held, notwithstanding some opinions to the contrary, that, whenever an enterprise may be aided by eminent domain, it may be aided by taxation. Upon this subject the court say:

"We have the combined authority of every legislature, of every executive, and of every court in the United States, that the construction and operation of a railroad even in the hands of a (usually called) private corporation, is a public purpose; for if it were otherwise every lawyer in the land knows that the sovereign power of eminent domain could not be exercised in its favor. This ought to be conclusive of the question; but it is said it is not *such* a public purpose as will support taxation. Strange, indeed! The power of eminent domain is limited in its scope and operation to but few subjects. At every step it is traversed and opposed. Everywhere the plea of inexorable necessity must be interposed in its favor or its progress is ended. Not so with taxation. As we have already seen, taxation is the most universal broad-sweeping and unlimited power possessed by governments. It is the power to destroy, and has no limit except in the will of the sovereign (per MARSHALL, C. J., in *McCullough v. Maryland*, 4 Wheat., 316, 425 to 436). No instance has been shown or can be shown, where the government may aid a thing by the power of eminent domain, where it cannot also aid it by the power of taxation. No instance has been shown nor can be shown where the government may aid a thing by the exercise of any of its sovereign powers, where it may not also aid it by taxation. * * * Why this distinction is made in favor of the right of eminent domain and against the right of taxation, has never yet been shown and cannot be shown. If any distinction is to be made, it should be (as we think we have heretofore shown) the other way—against the right of eminent domain and in favor of taxation. How is it that a railroad is so eminently a public purpose that the homestead may be taken from the owner, and himself and family, his wife and little children, driven out of doors, houseless and homeless, in order that the homestead may be converted into a railway or depot, while at the same time the railroad partakes so little of a public character that one cent could not be levied as a tax to aid in its construction or operation? How is it that to take the homestead is constitutional and valid, and to be encouraged,

while to take the one-cent tax is unconstitutional, invalid, and an unwarrantable infringement upon public rights? Both are taken for the same purpose, to be applied to the same use, and to belong to and be controlled by the same corporation."

Further on the court, in answer to the *assumption* of council, that a mill may be aided by the power of eminent domain and not by taxation, say:

"If it were true that mills, bridges, ferries, &c., could be aided by the exercise of the right of eminent domain, and not by taxation, it would not at all follow as a logical sequence that everything else which could be aided by the exercise of the right of eminent domain could not be aided by taxation. But even if such would follow, still the premises upon which this supposed argument is founded are false, and therefore the conclusion may also be false. If these were merely private mills, private bridges, and private ferries, neither the right of eminent domain nor the right of taxation could be exercised in their favor; but if they are public, or *quasi* public, as a railroad is public, then there can be no sufficient reason given why both the right of eminent domain and the right of taxation may not be exercised in their favor."

And on the general question as to the right of the legislature to declare what purposes are public, the court say:

"As to what is such a public benefit that it may be aided by the public, seems to be a question of public policy — of political economy — which must almost exclusively be determined by the legislature. And when the legislature have determined the question — when they have determined that a certain thing is of great public benefit, that it is public policy to aid it by taxation, if the courts may still say that such is not public policy, and for that reason declare the act of the legislature unconstitutional, the courts must possess almost despotic power. If such is correct doctrine, then there is an appeal from the legislature to the courts on mere questions of policy."

I think that, conceding that a steam mill is a private purpose, I have abundantly shown that a water mill is

in Kansas a public enterprise, and may be aided by taxation. And as the legal conclusion therefrom I submit this proposition, assuming that the purchaser is bound to take notice of the record set out in the answer of Burlington Township:

"That the expression 'motive power of a custom grist-mill,' is equally descriptive of a steam mill and a water mill — a public enterprise and a private one; one that could, and one that could not, be constitutionally aided by the issue of bonds under the law of 1872, and this legal proposition, logically, follows in my judgment:

"That where the authorities issuing, and the people voting for the issue of, bonds, use, in the order for, and the proclamation of, an election, a phrase, which with equal accuracy describes both a public and a private enterprise — an enterprise which may, and one which may not, be constitutionally aided; a work, for the aiding of which there is a valid statutory authority, and one for which there is no such authority — and bonds are issued, reciting a public purpose, the innocent holder thereof, without actual notice of the real purpose of their issue, is entitled to the conclusive presumption of law, that they were issued for the public, not the private, purpose; for the purpose authorized by law, not the purpose unauthorized; that the officers of the township issued bonds which the law said they might issue, not bonds which the law prohibited them from issuing."

REGISTRATION.

These bonds were duly registered in the office of the Auditor of State.

Sometime it will be necessary for the courts to determine what effect, if any, the certificate of registration has as a recital. I therefore repeat here the argument I made on this point in the case of *Marcy vs. Oswego Township.*

THE REGISTRATION LAW.

If the general law applicable to negotiable bonds, heretofore cited, does not effectually deprive the makers of such bonds of the defense set up against *bona fide*

holders, we have a statute law which does. This is known as the registration law, and was passed in 1872. It is on page 110, chapter 68, Laws of 1870. One peculiar feature of it was inserted for the express purpose, apparently, of evading the force of decisions of this court. It was known, of course, that whatever the general rule as to the negotiability of municipal securities might be, the State, which authorized their issue, had the right to declare, by express enactment, that they could only be negotiable upon compliance with certain conditions. This right the State exercised by declaring in the registration law that bonds issued under its provisions "shall not bear interest or be negotiable "until after the delivery and registration thereof."

This law was not passed until long after our bonds were issued and in *bona fide* holders' hands; but it was made the privilege of such holders to avail themselves of its provisions. It was passed, we say, to meet the very decisions we have cited, as a comparison between the law and the views of the courts on the subject of the negotiability of bonds will abundantly show. The rule that a municipality, by reciting in its bonds a compliance with the law authorizing their issue, was estopped to deny the regularity of their issue as against an innocent holder, was acknowledged to be sound; but it was thought inequitable and hard in many cases, and it was determined by statute law to avoid this rule, and to appoint some higher officer than county officials to examine all bonds sought to be put upon the market, for the purpose of determining their regularity and legality. Without his sanction, no act of the parties issuing them, no recitals, could create an estoppel: with his sanction they went upon the market

purged of all infirmities, with all prior equities cut off; or rather with an adjudication, under no circumstances to be impeached collaterally, that no prior equities existed. Hence the registration law, and the provision quoted.

The two sections of that law material to this inquiry are as follows:

"SEC. 14. Within thirty days after the delivery of such bonds, the holder thereof shall present the same to the Auditor of State for registration, and the Auditor shall, *upon being satisfied that such bonds have been issued according to the provisions of this act*, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds *the fact that they have been regularly and legally issued;* that the signatures thereto are genuine, and that such bonds have been registered in his office according to law; for which registration and certificate the Auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof.

"SEC. 15. That the holders of bonds heretofore issued, or that may hereafter be issued, in pursuance of any contract heretofore made, under any law of this State, may have the benefits of this act, by having such bonds registered in the office of said Auditor of State, as provided herein, for the registration of such bonds [issued] by virtue hereof. It shall be the duty of the Auditor of State, upon the registration of any bonds not issued under the provisions of this act, within ten days thereafter, to notify the officers issuing the same of such registration, which fact shall be entered by such officers in a book wherein the record of such bonds is kept, and such bonds shall thereafter be considered registered bonds."

If this law means anything, it means what we have said. It was intended to add to the value of our bonds by affording protection both to the bond-holder and the municipality issuing bonds. If registered, the bonds, in *bona fide* hands, are protected against the defense of prior equities; if unregistered, the counties are not estopped to deny the validity of the bonds, in whosesoever hands they may be.

The certificate on these bonds, which is in strict conformity with the law, reads as follows:

"I, A. Thoman, Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature, entitled 'An act to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith,' approved March 2, 1872.

"Witness my hand and official seal, this 29th day of May, 1872.

{Seal of the Auditor of State. Kansas.—Jan. 29, 1861.} A. THOMAN, *Auditor of State.*"

It will be admitted that the power which could create townships, and invest them with authority to issue bonds, could also delegate to any officer of its selection the power to determine whether any bonds thus issued had been issued in compliance with the law, with *all* the requirements of the law. This has been done, and we think the Auditor's certificate is conclusive, that the purchaser of bonds is not bound to look further.

In the Jeffersonville case, where the grant of power was limited by certain conditions, compliance with which was essential to the right to execute the power, it was held that the question whether these conditions, necessary to give jurisdiction of the subject-matter, had been properly complied with, was left to the determination of the very Board executing the power "because no other was designated." Here there is a grant of power with conditions precedent to its exercise, compliance with which is essential to give jurisdiction of the subject-matter; and the law which confers the power expressly designates the officer whose duty it is to determine whether all the conditions have been complied with regularly and legally. It authorizes the Auditor to settle the question definitely, judicially. It is not a mere ministerial duty, requiring the exercise of no discretion.

It permits him to investigate, to hear evidence, to satisfy himself; and it only becomes his duty to register bonds when he has become "satisfied that such bonds have been "issued according to the provisions of the law." His action, then, is final. It cannot, at least, be collaterally impeached. His certificate creates an estoppel against the municipality whose duly constituted agent he is. Registered bonds go upon the money markets of the East with the sanction of the State itself. They bear upon their face the statement, under the seal of the State, that the State which granted authority to issue bonds under certain conditions, has, by its appointed agent, examined the acts performed and the bonds issued in pursuance of such authority, and declares, as the result of such examination, that the authority has been legally exercised, that all the conditions precedent have been regularly and legally complied with!

Surely, if this does not authorize a prudent man to purchase bonds without looking further, there is no force in the repeated decisions of this court.

It may be asserted as a matter of general notoriety, that such is the effect in fact of registration. The only question buyers in the Eastern markets ask is, Are the bonds registered? If they are, they look no further; if not registered, they will have nothing to do with them.

It was the intention of the law to produce just this feeling; to make the buyer secure if bonds were registered; to make bonds unmarketable if not registered.

If any weight is to be attached to the repeated decisions of courts as to the law generally governing securities of this kind, and the express statutory provisions on the same subject, we must recover in this case.